

PART II.

GENERAL RULES AND PRINCIPLES.

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Introductory.

102. The Government of India Act requires that "the revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of the Act, be applied for the purposes of the Government of India alone". *vide* section 20 of the Act reproduced below :

20. (1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the Government of India alone.

(2) There shall be charged on the revenues of India alone—

(a) all the debts of the East India Company; and

(b) all sums of money, costs, charges, and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of that Act; and

(c) all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India; and

- (d) all payments under this Act except so far as is otherwise provided under this Act.
- (3) The expression "the revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India, and, in particular,—
- (i) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and
 - (ii) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any movable or immovable property in British India; and
 - (iii) all movable and immovable property in British India escheating or lapsing for want of an heir or successor and all property in British India devolving as *bona vacantia* for want of a rightful owner.
- (4) All property vested in, or arising or accruing from property or rights vested in, His Majesty under the Government of India Act, 1858, or this Act, or to be received or disposed of by the Secretary of State in Council under this Act, shall be applied in aid of the revenues of India.

103. The primary responsibility for the finances of India rests on the Secretary of State and the Secretary of State in Council under sections 2 (2) and 21 of the Act. reproduced below :—

2. (2) In particular, the Secretary of State may, subject to the provisions of this Act or rules made thereunder, superintend, direct and control all acts, operations and concerns which relate to the Government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India.

21. Subject to the provisions of this Act, and rules made thereunder, the expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of those revenues or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India :

Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council shall be deemed to be made with the concurrence of a majority of such votes.

104. The extent and the conditions of the delegations of authority to the Government of India and to Local Governments are described in Statutory Rules and other orders, the most important of which are the following :—

- (1) Rules made by the Secretary of State in Council under section 19A of the Act.
- (2) The Local Government (Borrowing) Rules framed under section 30 (1A) of the Act.
- (3) The Devolution Rules framed under section 45A of the Act.

- (4) Rules framed by the Secretary of State in Council under section 96B (2) of the Act.
- (5) Rules prescribed by the Secretary of State in Council to govern the expenditure powers of the Government of India.
- (6) Rules prescribed by the Secretary of State in Council to govern the powers of the Governors in Council in relation to expenditure from provincial revenues on reserved subjects.

These rules, and any subsidiary rules and orders issued by the authorities in India, whether under the provisions of any Statutory Rules or in the exercise of powers of superintendence, direction and control, constitute the various regulations with reference to which is conducted the work of audit entrusted to the Indian Audit Department under the Auditor General's Rules (Appendix I). The canons of financial propriety enunciated in Rule 11 of the Auditor General's Rules are the basic rules on which all audit is conducted as regards propriety of expenditure.

Scope of Audit.

105. The Accountant General is responsible to the Auditor General for the audit of all transactions which are entered in that section of the public account for which he is the appointed Account officer. The extent of the audit to be applied is indicated in the detailed rules to be found elsewhere. Rule 9 of the Auditor General's Rules imposes upon the Auditor General the responsibility for the efficiency of the audit of expenditure in India from the revenues of India. Rule 12 authorises the Governor General in Council to require the Auditor General to—

- (1) arrange for the audit of the accounts of the receipts of revenue of any Government department, the accounts of any public or quasi-public body, or any other accounts although they may not relate directly to the receipt and expenditure of Government moneys; and
- (2) arrange for the audit of stores or stock in the possession of an officer or a department of Government, and for the audit of grants of land and alienations of land revenue.

If the Accountant General be requested by the Local Government or any other authority to undertake audit which does not pertain to his office under the above rule or regarding which the Auditor General has issued no orders, either in an authorised Audit or Account Code or elsewhere, he should refer the matter to the Auditor General for orders.

105-A. In the Audit of Government accounts, Audit should not make independent enquiries among the taxpayers or the general public, as such action amounts to an encroachment on the functions of the Administration. Audit should confine itself to calling upon the Executive to furnish necessary information and, in cases of difficulty, it should confer with the Executive as to the best means of obtaining the evidence which it requires.

Where the audit of the receipts of Government revenue has been entrusted to the Auditor General, it is the duty of audit to ascertain that adequate regulations and procedure have been framed to secure an effective check on the assessment, collection, and proper allocation of revenue, and to satisfy itself that any such regulations and procedure are being duly carried out. Audit is at liberty to enquire of departments, which are receivers of public money, what checks are imposed against the commission of irregularities at the various stages of collection and accounting and to suggest improvements in the procedure. Audit might, for instance, suggest in a particular case that a test inspection should be carried out by comparing a sample set of receipt counterfoils with the receipts actually in the hands of the taxpayers or other debtors. The papers relating to such an inspection, if made, should, in the ordinary course, be made available to audit.

106. Grants of land and alienations of land revenue (other than those in which assignments of land revenue are treated as cash payments) made by the Local Government are also subject to the audit of the Accountant General.

107. The *raison d'être* of audit is the necessity for a powerful and independent central agency which will bring financial irregularity and misdemeanour prominently before (1) the Executive, and (2) the Legislature. Both the latter need the assistance of such an agency—the first in respect of compliance, by Government servants subordinate to it, with the rules and orders issued by it in the discharge of its responsibility to the Legislature or other authority, as the case may be, and the second in respect of compliance, by the Executive (aided by its subordinates), with the orders of the Legislature and with those issued by the local Government and higher authorities in the lawful exercise of functions which they exercise independently of the Legislature in India.

Sanctions and Orders.

108. (a) Sanctions and orders of the Secretary of State are communicated by the Government of India direct to the Audit officers concerned and require no audit check.

(b) Sanctions and orders of the Government of India are communicated to Audit officers in the manner laid down in Article 230 of the Civil Account Code. The audit of such sanctions and orders will devolve upon the Audit Officers concerned, but the sanctions and orders which have been issued with the concurrence of the Auditor General require no further audit check.

1. Whenever the Auditor General gives an audit ruling on any case referred to him by Government, it will be communicated to the Audit Officer concerned, by the Auditor General.

2. If the Accountant General has any serious doubt as to the correctness of any sanction or order which has been issued with the concurrence of the Auditor General, he may place his views privately before the Auditor General.

3. Appropriations sanctioned by the Government of India, Finance Department, from the reserve at their disposal are audited by the Accountant General, Central Revenues, *vide* Rule I to Article 200.

4. If documents relating to sanctions and orders are claimed to be secret, the Accountant General should accept a statement of facts certified by the Governor

General in Council in lieu of those documents (*vide* Rule 17 of the Auditor General's Rules).

109. The audit of the sanctions and orders of authorities lower than the Government of India will invariably devolve upon the Audit Officer, who is entitled to receive direct from the sanctioning authority a copy of the sanction or order signed by a responsible officer. The exact procedure for communication of sanctions may be settled under the orders of the Local Government, and there is no objection to consolidated statements of sanctions, relating to a particular class of expenditure or other transactions, being accepted in audit in lieu of copies of individual orders, provided the statements reach the Audit office in time for the application of the audit check on the relevant transactions.

1. If a sanctioning authority other than the local Government does not disclose the terms and other particulars of a sanction or order on the plea that they are secret, the Accountant General should demand the necessary certificate of the local Government under Rule 17 of the Auditor General's Rules.

110. In cases in which a Statutory Rule or any order issued thereunder by competent authority requires that an authority of another department shall consult the Finance Department of the local Government when or before issuing an order or sanction, and the Finance Department desires the Audit Officer to watch compliance with such requirement, the Audit Officer shall merely report breaches of the rule to the Finance Department, and not raise any formal audit objection or enter into any correspondence with the sanctioning authority.

111. The sanctions and orders affecting financial transactions may be broadly divided into three classes :—

- (1) Rules and general orders.
- (2) Grants and Appropriations
- (3) Sanctions to Expenditure.

Audit and Scrutiny of Rules and Orders.

112. It is the duty of Audit to scrutinise all financial rules and orders, issued by any authority in India which affect receipts, expenditure, or arrangements within the scope of audit and to satisfy itself that they are consistent with statutory rules and are otherwise satisfactory.

113. Statutory Rules and standing orders issued by the Governor General in Council are scrutinised by the Auditor General himself. Non-statutory rules and standing orders issued by the Government of India and all rules and standing orders issued by lower authorities should be scrutinised by the Principal Auditor concerned. Non-statutory rules and standing orders issued by the Government of India and all rules and standing orders issued by lower authorities affecting more than one Principal Auditor will be scrutinised by the Accountant General, Central Revenues, who may consult the other Principal Auditors concerned where necessary.

- (1) In the case of delegations of powers to the Auditor General no scrutiny by any Audit Officer is necessary as such

delegations are made by the Government of India after consultation with the Auditor General.

- (2) Rules and standing orders issued by the Auditor General himself are not subject to the scrutiny of any Audit Officer subordinate to him.

113-A. All Rules and standing orders (both statutory and non-statutory) issued by Provincial Governments or by authorities subordinate to Provincial Governments should be scrutinised finally by the Provincial Accountants General.

113-B. The audit officers referred to in Articles 113 and 113-A may, on their own responsibility, accept the rules, orders, etc., for the scrutiny of which they are responsible, object to them, or ask for their alteration. The Auditor General shall, however, be consulted on all cases of doubt, difficulty and difference of opinion and on all points in connection with which his specific concurrence is, for statutory reasons, required.

NOTE.—Two copies of all the rules issued in the form of codes, manuals or standing regulations by the Departments of the Government of India and the Local Governments should be obtained and sent to the Auditor General.

114. In the scrutiny of these rules and standing orders it should be seen—

- (1) that they are consistent with the essential requirements of audit and accounts as determined by the Auditor General.
- (2) that they do not conflict with the orders of any higher authority, and
- (3) that, in case they have not been separately approved by competent authority, the issuing authority possesses the necessary rule-making power.

115. In applying the first of these checks, the Accountant General should be guided by any subsidiary instructions which may be issued by the Auditor General from time to time. The principle to be observed is that the discretion vested in authorities empowered to make rules is not to be fettered unnecessarily merely because difficulties may arise in the application of the necessary audit checks or the maintenance of proper accounts. If the audit and accounts procedure can be amended without loss of efficiency or extra expense, the rule should be accepted and that procedure amended accordingly. All doubtful points, unless they are trivial, should be referred to the Auditor General and no objection should be raised without reference to him.

116. In applying the second of these checks the guiding principles enunciated below should be observed :—

- (i) If the authority framing the rule is granted full powers in respect of a certain class of expenditure, an order issued under those powers can be challenged by audit only under the canons of financial propriety.

(ii) If it is granted powers which may be exercised provided due regard is paid to certain criteria which are expressed in a general form, orders issued under those powers can be challenged by audit—

(1) if the disregard of the criteria is so serious as to make the order perverse, or

(2) if the facts of the case are such as to make the audit authority confident that one or more of the criteria have been disregarded.

(iii) If it is granted powers which are expressed in precise terms, the Audit Officer is bound to ascertain that the order defining its powers is exactly obeyed in every instance.

(iv) In all cases, if the Accountant General has reason to think that undue advantage is taken of the provisions of any orders whereunder the rule is issued, he should bring the case to the notice of the proper superior authority. Cases of disregard of canons of financial propriety should be dealt with under Article 118.

117. All orders of delegation of financial authority should be scrutinised carefully as, once they have been accepted, audit of sanctions as well as of expenditure or other transactions may be conducted against them for an indefinite length of time. They should be examined in the Higher Audit Section and, before they are notified for the guidance of the audit sections concerned, they should be formally accepted by the Accountant General himself.

118. When the Accountant General considers that any rule or order has infringed any one of the canons of financial propriety, he should report his opinion to the administrative authority concerned for such action as that authority may think fit to take, and request it to intimate, in due course, the action taken by it. Thereafter, if he considers it necessary, the Accountant General may report to the next higher authority, and if this be the Government of India the reference should be made through the Auditor General. As to the further action to be taken, see the proviso to Rule 14 of the Auditor General's Rules. Such correspondence should be initiated and afterwards conducted by the Accountant General personally, who if he thinks fit, may make a direct report to the Local Government. See also Rule 11 (b) of the Auditor General's Rules (Appendix 1).

119. Similarly, cases may arise in which, though no audit objection can be taken to the terms of an order of delegation, or other financial rule, yet the Accountant General feels that the order is likely to impair seriously the efficiency of the conduct of public business, *vide* Rule 28 (1) of the Devolution Rules. For instance, the principle of authorising disbursing officers themselves to sanction special charges may be carried too far or extended to cases in which obviously some sort of control by higher authority is advisable. If such cases are important, the Accountant General should make a suitable representation to the

Finance Department, and thus give the latter the opportunity of reviewing or reconsidering the orders as the case may be.

120—122. Deleted.

122-A. The authorities of the Audit Department are not required, under Articles 112 *et seq.*, to undertake the formal scrutiny of and thereby to make themselves responsible for the accuracy of Departmental manuals when these, so far as financial, accounting and audit matters are concerned, merely reproduce extracts from substantive Codes, Regulations, Rules, etc. When such manuals introduce any new detailed financial, accounting, or audit procedure, the Audit Officer concerned may advise as to whether the rules are *intra vires* of the authority issuing the manual and in accordance with correct principles, but such advice should be given in respect of specific individual rules and not on the manuals as a whole.

Audit of Grants and Appropriations.

123. In auditing grants, it is sufficient to see,—

(1) In the case of votable expenditure, that the grant is covered by the vote of the Legislature, or, as the case may require, by orders issued—

- (a) by the Governor General in Council under section 67A (7) of the Government of India Act, or
- (b) by the Governor General himself under section 67A (8), or
- (c) by the Local Government on the certification of the Governor under proviso (a) of section 72D (2), or
- (d) by the Governor himself under proviso (b) of section 72D (2) ; and,

(2) In the case of non-votable expenditure, that appropriation has been made by the *Finance Department of the Government of India* or of the *Local Government*, as the case may require.

124. The procedure for auditing appropriations is prescribed in Chapter 7.

Audit of Sanctions to Expenditure.

125. In the audit of sanctions to expenditure, the guiding principles enunciated below should be observed :—

- (i) If the sanctioning authority is granted full powers in respect of a certain class of expenditure, a sanction accorded under those powers can be challenged by audit only under the canons of financial propriety.
- (ii) If it is granted powers which may be exercised provided due regard is paid to certain criteria which are expressed in a general form, sanctions accorded under those powers can be challenged by audit—

- (1) if the disregard of the criteria is so serious as to make the sanction perverse, or

- (2) if the facts of the case are such as to make the audit authority confident that one or more of the criteria have been disregarded.
- (iii) If it is granted powers which are expressed in precise terms, the Audit Officer is bound to ascertain that the order defining its powers is exactly obeyed in every instance.
- (iv) Cases of disregard of canons of financial propriety should be dealt with in the manner prescribed in Articles 116 (iv) and 118.
- (v) A group of works which forms one project shall be considered as one work, and the necessity for obtaining the sanction of a higher authority to a project is not avoided by reason of the fact that the cost of each particular work in the project is within the powers of the lower authority.
1. In the case of projects of irrigation, navigation, embankment or drainage works, the construction estimates of which have been closed, this rule is subject to the special rules prescribed for sanctions to open capital expenditure.
2. A preliminary enquiry, survey, or experiment which must necessarily precede the preparation of any project or scheme, need not be considered for the purpose of this rule as forming part of that project or scheme.
- (vi) If any one item of a scheme requires the sanction of higher authority, that item should not be given effect to before sanction to it is obtained. In determining whether any other portion of the scheme may be put in hand prior to the receipt of such sanction, due regard must be paid to the provisions of Rules 1 (10) and 1 (5) of the Central and Provincial Audit Resolutions respectively.

125-A. In scrutinising sanctions and orders for the grant of additions to pay and other special concessions and allowances referred to in Article 230-A, Civil Account Code, the Audit Officer should examine carefully the reasons for the grant of the special pay, allowance or concession, as recorded in the sanctioning order (or as communicated to him confidentially by the sanctioning authority) and should question the propriety of such sanctions if it appears to him that the principles laid down in the Fundamental Rules for the grant of such special pay, concessions, etc., have not been duly observed.

126. Except under the orders of a Gazetted Officer, no order of sanction should be accepted in audit unless it is an order received from or through the sanctioning authority, *vide* Article 109. When an order sanctioning expenditure contains no indication of the amount or limit of the sanction, the Accountant General should address the authority who issued it.

127. All sanctions to expenditure should be noted in a prescribed audit register or other record against which the audit of the expenditure will be conducted, and if it is known that the charge will entail a recovery from a third party, or such a recovery has been ordered by the sanctioning authority, a note of the recovery due should also be made in a suitable register so that it may be duly watched.

Audit of sanctions to expenditure accorded by the Auditor General.

127-A. Under rule 27 of the Auditor General's Rules, it has been arranged by the Governor General in Council that all sanctions to expenditure accorded by the Auditor General under Rule 26 of those Rules shall be audited by the Deputy Secretary to the Government of India in the Finance Department. If, however, the post of Deputy Secretary should, at any time, be held by a member of the Indian Audit and Accounts Service, the audit of such sanctions will be conducted by the Secretary of the Finance Department or some other officer to be nominated by the Governor General in Council. Under the system at present in force, the sanctions are ordinarily submitted for pre-audit before the relevant expenditure is incurred. Two lists, showing respectively the classes of sanctions to expenditure accorded by the Auditor General which are required to be audited under this rule, and those which, being rather of the nature of administrative sanctions, do not require such audit, are given in Appendix 2-A. In the case of sanctions requiring to be audited under this rule, it is the duty of the Audit Officer responsible for the final audit of expenditure incurred against any such sanction to satisfy himself that the sanction itself has been passed in audit by the responsible officer.

Audit of Expenditure.

128. As a rule, heads of offices and other Government servants who are called upon to make disbursements on behalf of Government, draw money for the purpose from treasuries under the rules in one of the authorised Account Codes or in the Treasury Orders or rules issued thereunder. But, for several classes of payments made at stations at which there are Audit offices, it is usually arranged that the vouchers shall be submitted to the Audit office before payment and that payment shall be made only on audited bills.

129. A preliminary check is applied by Treasury Officers when bills and vouchers are presented to them for encashment. But the audit of Civil transactions is conducted almost entirely in Accountants General's offices or in branch offices subordinate to them, and this central audit is at present nearly entirely post-audit in character. Pre-audit, or audit before payment, is applied to a small extent only. Some accounts of Public Works disbursing officers are checked at periodical inspections of their offices by Audit Officers, but this system of local audit does not take the place of central audit, as the main accounts are submitted periodically to the Audit office and only the initial accounts and some subsidiary account records are examined locally.

1. The general rules and principles of audit defined in this chapter are equally applicable to all forms of audit, unless there be something repugnant in the subject or context.

130. The main objects of audit of expenditure other than appropriation audit, for which see Articles 123 and 124, are to ensure—

- (a) that the expenditure has been incurred by an officer competent to incur it,
- (b) that the expenditure has received the sanction, either special or general, of the authority competent to sanction it,

- (c) that the expenditure does not involve a breach of any of the canons of financial propriety laid down in Rule 11 of the Auditor General's Rules,

1. The procedure for dealing with breaches of canons of financial propriety is laid down in Article 118.

- (d) that the expenditure sanctioned for a limited period is not admitted in audit beyond that period without further sanction,
- (e) that payment has, as a fact, been made, and has been made to the proper person, and that it has been so acknowledged and recorded that a second claim against Government on the same account is impossible, and
- (f) that the charge is correctly classified, and that (as in the case of Public Works and Forest accounts) if a charge is debitable to the personal account of a contractor, employee or other individual or is recoverable from him under any rule or order, it is recorded as such in a prescribed account.

131. The detailed audit of vouchers in support of payments is conducted to see—

- (a) That the vouchers are in the prescribed form, and that they are duly receipted by the payees and in original, that a brief abstract is given in English under the signature of the drawing officer on all purely vernacular vouchers, and that vernacular signatures are transliterated, also that sub-vouchers contain notes of dates of payment.
- (b) That they are numbered with reference to the number in the list of payments, schedule, Schedule Docket or other account, as the case may be.
- (c) That the details work up to the totals and that the totals are in words as well as in figures.
- (d) That they bear a Pay order, signed by the Treasury Officer in the case of vouchers cashed at treasuries or by the responsible disbursing officer in the case of other vouchers. In the case of vouchers paid at the Bank it should be seen in particular that they bear the pay order of the Collector in all cases in which it is required under the rules in Articles 309 to 316 of the Civil Account Code.
- (e) That they are stamped "paid".
- (f) That there are no erasures, and that any alterations in the totals are attested by the officer concerned as many times as they are made.
- (g) That stamps are affixed to all vouchers for sums in excess of Rs 20, and that they are punched; but see Articles 11 and 12, Civil Account Code, Volume I, and also Rule 1 under Article 481 of this Code.
- (h) That no payment is made on a voucher or order signed by a subordinate instead of the head of the office himself or on a voucher or order signed with a stamp, and that copies of

sanctions are certified by the sanctioning officer or by a Gazetted Officer authorised to sign for him.

NOTE.—In the case of charges for which special sanction is necessary under rule [see Article 308 (a)], no separate sanction need be insisted on if the bill or voucher on which the money is drawn is signed, or countersigned, or countersigned prior to drawal, by the authority competent to sanction the expenditure; but charges of the kind in question may not be included in the same bill with other non-special items. This does not apply to the case of temporary establishments, the sanction for which should always be called for and noted in the Audit Register and audit conducted against such sanction in accordance with Article 300.

- (i) In all cases in which it is prescribed that agreement should be effected between two different documents, the fact of the agreement should be noted on both the documents and initialled by the auditor who makes the agreement.
- (j) That if a treasury voucher be paid by transfer, it is stamped as having been so paid, that the head to which the amount is credited is noted on it, and that the credit is traced in the cash account when possible.
- (k) That Fund and Income Tax deductions have been correctly made.

NOTE.—In respect of the pay bills of his own establishment and of pay bills of gazetted officers and pension bills paid by him after pre-audit, the Audit Officer acts as the officer responsible for paying income chargeable under the head "Salaries" and is, therefore, under a statutory obligation to deduct, at the time of payment, income-tax on the amount payable at the rate applicable to the estimated income of the assessee under the head "Salaries"—vide Section 18 (2) of the Income-tax Act XI of 1922. In respect of other establishment, pay and pension bills, the Audit Officer is not responsible for checking the correctness of the income-tax deductions; but whenever such bills come under his scrutiny in the course of audit, he should always see that deductions of income-tax are not omitted in cases where such deductions should clearly be made.

- (l) That no bills for any pay or allowance not claimed within six months of its becoming due have been paid without the sanction of the Accountant General.

1. Rule 17 of Appendix 1 applies also to vouchers declared to be secret or confidential.

NOTE 1.—The term "voucher" should be taken to include "sub-voucher" for all purposes of audit.

NOTE 2.—Cash memoranda issued by tradesmen for sales against cash payment should not be regarded as sub-vouchers unless they contain an acknowledgment of the receipt of money from the purchaser as named therein for the price of the articles sold.

131-A. Recurring charges which are payable on the fulfilment of certain conditions or up till the occurrence of a certain event should be admitted in audit on receipt of a certificate from the drawing officer to the effect that the necessary conditions have been duly fulfilled or the event has not yet occurred, as the case may be. In order to scrutinise the manner in which the executive officers discharge their financial responsibilities the Audit Officer should make occasional enquiries about the facts on which the certificates given by those officers were based.

132. The audit of rates paid for work done and supplies made should receive special attention, but as objections can be raised only in cases which involve a distinct breach of the first canon of financial propriety

this audit will usually present considerable difficulty. It demands the exercise of great intelligence and care and, therefore, cannot be entrusted to an ordinary auditor to be applied as a mechanical check. Individual abnormalities in rates should of course be watched, but the institution, from time to time, of a comparative examination, through the vouchers and accounts received for audit, of the rates paid by various officers in the same or neighbouring localities, may indicate cases in which, the rates being abnormal, further enquiry may be desirable. The assistance of the Finance Department may be invoked in obtaining reliable schedules of rates and other necessary information. In the case of Public Works offices, useful work in the direction of making a comparative examination of rates can be done also at inspections, vide Article 857.

133. The audit of accounts and vouchers received in the Audit office should as a general principle precede their entry in the relevant classified abstract or in the Detail Book. With a view however of obviating delay in the closing of the monthly Civil and Exchange Accounts on the dates prescribed, the compilation of accounts may commence before audit in the case of the second schedule of treasury payments and of Public Works, Forest and Exchange Accounts. With this exception, the general principle indicated above may be departed from only in special circumstances and with the express sanction of the Accountant General.

134. Whilst it is desirable that auditors and others employed on audit duties should not be at liberty to make any relaxations in audit, of their own motion, it is of considerable importance that the prescribed checks should be observed in spirit and not in the letter as opposed to the spirit.

135. In the following cases, cent. per cent. check is unnecessary, and relaxation of post-audit is authorised to the extent indicated :—

Serial No.	Class of Vouchers.	Percentage of vouchers to be checked.	REMARKS.
*1	Pay bills of those establishments the normal monthly cost of which is less than Rs. 500	50	Vouchers to be audited should be selected by a Gazetted Officer.
2	Travelling allowance bills of Government servants of the 3rd and 4th classes	50	
3	Bills amounting to not more than Rs. 500 on account of contingencies, of Heads of Departments and other officers, not requiring countersignature.	50	
4	Bills amounting to not more than Rs. 500 on account of countersigned contingencies	25	

* NOTE.—Pay bills of those establishments, or sections of establishments on time-scale of pay the numerical strength of which is ten or less and the normal monthly cost less than Rs. 500 should be audited 50 per cent., provided that the audit is conducted by numbers and against the entries of names in the fly-leaf of the audit register in form B of Appendix II of this Code.

Serial No.	Class of Vouchers.	Percentage of vouchers to be checked.	Remarks.
5	Pension bills (other than those relating to anticipatory pensions, gratuities or lump sum payments of any kind)	16½	Vouchers to be audited should be selected by a Gazetted Officer.
	(NOTE.—The selection of vouchers to be audited should be so made that all the vouchers received from a treasury during a month shall be audited at the same time, and that the vouchers of each treasury shall be audited at intervals of not more than six months).		
6	All treasury vouchers (as regards arithmetical calculations)	25	
7	Arithmetical calculations in vouchers received with the Monthly Account of Divisional Officers of the Public Works Department, excluding final running account bills in yellow form which should be checked cent. per cent.	10	Vouchers to be audited should be selected by the Superintendent.
8	Deposit Repayment Vouchers	25	
8.A	Interest Payment Vouchers	5	
8.B	Refunds Vouchers (other than those which are required to be noted in the Audit office against original credit shown in the detailed statements)	10	
8.C	Discount Vouchers	10	
8.D	Remittance Transfer Receipts and Supply Bills	10	
8.E	Scholarships and Grants-in-aid bills under Rs. 1,000	25	
9	Cheques including Personal Deposit chalang and estate cheques.	About 5	These classes of vouchers need not be examined in detail by the auditors but about 5 per cent. should be examined by the Superintending Staff.
10	Indian Posts and Telegraphs Department vouchers	"	
11	Cash Orders	"	
12	Vouchers for Salt and Customs remittances (simple receipts)	"	
13	Vouchers in support of payments relating to (1) Revenue Survey Advances, (2) Cost of Survey marks, (3) Abkari Advances, (4) Loans under the Land Improvements and Agriculturists Loans Acts	"	

NOTE 1.—In the case of item No. 10 the following points should receive special attention :—

- that the voucher has been signed by a responsible departmental officer.
- that the amount of the voucher as shown in words agrees with that in figures.

- (c) that the amount of the voucher agrees with that shown in the covering schedules,
- (d) that the voucher bears a pay order by the Treasury Officer or Bank Agent in case of direct payments and the paid stamp of the treasury or Bank according as it is paid at the treasury or the Bank. In the case of payments referred to in Article 511, Civil Account Code, which are paid at the Bank, it should be seen in particular that the receipts bear the Treasury Officer's pay order.

NOTE 2.—The relaxations of audit prescribed in this Article are not applicable in the case of vouchers received with the Exchange Accounts. Such vouchers should be subjected to cent. per cent. audit check. An exception may, however, be made in the case of Railway Warrants of which only a percentage, to be determined by the Accountant General, need be subjected to the scrutiny which has to be applied by the responding office.

136. In the case of items Nos. 1 to 8-E, a record of the vouchers selected for percentage audit should be maintained in a register in suitable form, the order of selection being written by the Gazetted Officer or Superintendent, as the case may be, and the auditor concerned being required to certify and report to the selecting officer that he has audited all the vouchers selected. The selection must be made personally by the Gazetted Officer in charge (or the Superintendent in the case of items 8 to 8-E) and this duty of selection may not be delegated. In all cases the selection should be made in such a way that the bills and vouchers of every drawing (or account rendering) officer should come under audit during the year according to the proportions as the prescribed percentage may admit. But, whenever it is apparent from their state, or otherwise, that certain accounts require more detailed audit than the percentage prescribed, the orders of the Accountant General should be taken to increase, for the time being, the percentage of the bills or vouchers to be audited.

Audit of Receipts.

137. Audit of receipts is of a simple character, it being sufficient to see that all sums receivable are duly paid to the proper officer and brought to credit by him. See also Article 105.

Audit of Stores.

138. Audit of stores comprises not only an examination of the quantity accounts of the receipts, issues and balances of the stores, but also the scrutiny of the accounts of values with a view to ascertain that they tally, in all respects, with the expenditure and other transactions of the public accounts connected with the stores, and *vice versa*. With this object, two points will always require special attention,—(1) that the stores are priced with reasonable accuracy, and that the rates are reviewed from time to time and revised when necessary, and (2) that the stocks are counted and otherwise examined periodically to ensure that the balances on hand represent the quantities as well as the values borne on the account books.

Audit should not, except when specially authorised to do so, assume responsibility for the physical verification of stores, but it has the right to investigate balances of stores, if any discrepancies in the stores accounts

suggest that such action is necessary. It is the duty of audit to see that a certificate of verification of stores is recorded periodically by a responsible authority, that the system of verification adopted by the executive is adequate and proper and that, wherever possible, the staff responsible for the verification is independent of the staff which is responsible for the physical custody of the Stock or for keeping accounts of it. It should also be seen that, wherever practicable, verifiers of stock work directly under the control of the local Government, instead of under the heads of individual departments.

Audit of Accounts of Non-Government Institutions.

139. Where the Accountant General is required to audit the accounts of any local fund, public or *quasi*-public fund or non-Government Institution or any private accounts (*vide* Article 105), such accounts should be examined under rules prescribed by the Auditor General.

140. Sanctions constituting such funds or bodies ordinarily prescribe what classes of receipts are to be credited to them, what classes of expenditure are to be admitted against them, and who will be the controlling authority. The Audit Officer should see that in regard to receipts and expenditure the prescribed rules are followed and for this purpose he should require, in respect of all items of the account, sufficient information, either in the form of vouchers or in some other form, as may be considered necessary in each case.

140-A. In the audit of other than Government accounts, auditors should not make independent enquiries of taxpayers or of the public at large unless such a procedure is expressly authorised by statutory regulations or executive orders.

Amendment and Interpretation of Rules.

141. The following procedure should be observed by an Accountant General when he is of opinion that an amendment of a rule in an authorised code is required, or that necessity exists for the authoritative interpretation of a rule :—

- (1) When any defective rule comes to the notice of an Accountant General in the course of his audit duties, he will first see whether the rule, as it stands, admits of a definite audit decision being given in one way or another. If so, he will ordinarily decide the audit point according to the rule as it stands, and then make a reference in regard to the amendment of the rule—
 - (a) to the local Government when the rule appears in an authorised code of the local Government and is a rule which can be amended by that authority without reference to the Auditor General,
 - (b) to the Government of India when the rule appears in an authorised code of that Government or is a rule in respect of which the power of interpretation rests with that authority or with the Governor General in Council,
 - (c) to the Auditor General in all other cases.

- (2) Where, however, the expenditure involved is of really material importance, the Accountant General may consider it desirable to defer an audit ruling until the points of doubt have been settled. Or again, the rule may be so questionable in itself, or with reference to a discrepant instruction elsewhere in the regulations, that the Accountant General may feel himself unable to give a satisfactory audit ruling one way or the other on the regulations as they stand. In either of these cases it will be his duty to refer the point to the Auditor General as the principal audit authority in India, before he gives any decision. If the point in doubt has formed the subject of correspondence between the Accountant General and the local Government, a copy of the letter containing the views of the local Government should accompany the reference to the Auditor General.

NOTE 1.—Any recommendation by a responsible administrative authority for exceptional treatment outside rule should be addressed not to the Accountant General but to the local Government or the Government of India, as the case may be.

NOTE 2.—A reference to the Auditor General for an amendment or an interpretation of a rule under clause 1 (c) above should be made only when a concrete case necessitating an amendment or an interpretation actually arises. In making such a reference, the details of the concrete case should always be furnished. But a suggestion merely for the co-ordination of rules need not await a concrete case.

Maintenance and Audit of *Pro formâ* Accounts.

142. The operations of some departments of the Administration sometimes include undertakings of a quasi-commercial character, e.g., an industrial factory or a store. Even though these may be maintained almost entirely for the benefit of the department, it is still necessary, to enable the ultimate benefit to be compared with the actual cost, to know exactly the profit or loss on the transactions of the undertaking itself. In such cases, the maintenance of suitable Capital, and Profit and Loss, accounts becomes a necessity, and as the Government system of accounts, being on a purely cash basis, is unsuitable for such commercial accounts, these are usually kept on a *Pro formâ* basis.

143. When the Accountant General becomes aware of the existence of a commercial undertaking in any department, or finds that funds are provided for it in the estimates, he should ascertain the exact nature and scope of the activities of the undertaking with a view to determining whether it is essential or advisable to maintain suitable subsidiary and *Pro formâ* accounts. If he decides that the maintenance of these accounts is desirable he should request the local Government to issue necessary orders. The local Government may entrust the preparation of a system of accounts to one of its own officers or to the Accountant General. If the local Government adopts the former course, the Accountant General should represent to the local Government the desirability of—

- (a) requiring the officer entrusted with the work to devise, not merely a system of accounts, but also a set of standing orders to regulate the working of the concern and a schedule of the

powers entrusted by Government to authorities subordinate to it in connection with the control and management of the concern, and

- (b) the submission to audit for expert scrutiny of the complete system, together with the account forms, the standing orders relating to the working of the concern and the schedule of powers of the officers controlling and managing the concern.

The Accountant General will be responsible for seeing that the system adopted conforms to the fundamental principles of accounts and audit from the ordinary and the commercial points of view. In all cases of importance the advice of the Auditor General should be sought.

144. All gross receipts and expenditure of commercial undertakings should be budgeted and accounted for under the appropriate major and minor heads and units of appropriation, in the same way as ordinary receipts and expenditure of Government. The heads of accounts should, as far as possible, be common to the Government accounts and the General Ledger maintained at the undertaking and should be carefully selected with due regard to the principles of governmental and commercial accounting, so that the monthly classified account of income and expenditure of the undertaking may be prepared readily from the General Ledger maintained at the undertaking and submitted to the Accountant General for incorporation in the general accounts of Government by such date as may be fixed by him in consultation with the head of the commercial undertaking. The monthly classified account should be accompanied by such schedules and vouchers as may be prescribed by the Accountant General.

Where necessary, the undertaking may have a separate remittance account with the treasury into which all cash realisations of the undertaking may be paid and out of which funds required for disbursements may be drawn on cheques under the rules and procedure obtaining in the Public Works and Forest Departments. A new remittance head "Remittances of Government Commercial Undertakings" may be opened for this purpose under Section "T—Remittances". The relevant provisions in the Civil Account or other Codes and in standing orders of the concerns regarding the procedure for the drawal of money from the treasury and its disbursement should be carefully observed.

The transactions of Government commercial undertakings with other departments of Government may be settled by book transfers through the Accounts Officer, the remittance head mentioned above being operated upon, where necessary, for this purpose, or by cheques, Remittance Transfer Receipts or demand drafts, as may be decided by Government. Cheques and demand drafts should be crossed in the manner prescribed in Article 23-A of the Civil Account Code so as to ensure credit of the proceeds to the Remittance head or to other suitable head of account at the treasury.

144-A. If according to the rules of Government accounting, adjustments are not made in the Government accounts of certain indirect and overhead charges, it might be necessary to make *pro forma* adjustments

in the books of the undertaking for these transactions, so that a correct presentation of its trading results may be available. Thus the following adjustments have to be made periodically in the accounts of the undertaking before the net results of its trading during a period can be ascertained :—

- (a) Cost of management, supervision, etc.
- (b) Cost of audit.
- (c) Interest on capital invested.
- (d) Depreciation of wasting assets.
- (e) Leave, pension and passage contributions, bonus for Provident Fund, etc.

Whether any corresponding entry should be made in the Government accounts, and if so, the details of the entries to be made, should be decided in consultation with Government.

144-B. The audit of the monthly classified account of income and expenditure and of the connected schedules and vouchers and appropriation audit should be conducted centrally at the office of the Accountant General. This central audit should be supplemented by a local audit at suitable intervals of the accounts and the primary accounts records maintained at the undertaking. In addition to bringing out any irregularities found, the audit report should contain a brief summary of the trading results and comments on such of the items in the Trading and Profit and Loss Accounts and Balance Sheet as require comment.

NOTE.—The incorporation of these *Pro forma* accounts in the Commercial Appendix to the Appropriation Report or in the alternative in the Departmental Administration Report does not in any way affect the responsibility for their audit as enjoined herein. When the *Pro forma* or subsidiary accounts are included in the Departmental Administration Reports they should bear an audit certificate in the form prescribed in Note 2 to paragraph 52 of Appendix 16 to the Audit Code and be supplemented by such audit comments as appear necessary.

145. These rules are not applicable in their entirety to commercial or quasi-commercial departments, e.g., the Indian Posts and Telegraphs Department and the Public Works and Railway Departments, the rules and procedure relating to which are described in their respective Accounts Codes.

146. *Pro forma* accounts are also necessary in respect—

- (1) of the transactions of the Famine Relief Fund of the local Government.
- (2) of the transactions connected with the borrowings of the local Government in the open market under the Local Government (Borrowing) Rules, vide Appendix 6, and
- (3) of the transactions connected with the advances received by the local Government from the Provincial Loans Fund.

These are maintained in the Audit office in accordance with the procedure indicated in Articles 147 and 148.

147. The account of the Famine Relief Fund is prepared annually in Form 4 under the rules in Schedule IV of the Devolution Rules, and copies of it transmitted to the Finance Department of the local Government (which is responsible for the administration of the Fund) and the Auditor General.

1. Under paragraph 11 of Schedule IV to the Devolution Rules, Forms 4 and 4-A have been prescribed for the maintenance of the accounts of the Famine Relief Fund and the annual assignments in connection therewith.

148. The *Pro formâ* accounts of the local Government's borrowings under clauses (2) and (3) of Article 146 should also be prepared annually in suitable form to show the proceeds of all advances and loans raised by the local Government and the disposal of such proceeds. Copies of these accounts also should be sent to the Finance Department of the local Government with the Accountant General's observations (if any) thereon.

(1) In preparing these accounts and in applying audit checks on expenditure taken against the proceeds of the loans, the principle of canon 2 of the financial propriety should be borne in mind. It should also be seen that all loans raised under the Local Government (Borrowing) Rules are correctly utilised on the objects for which they were originally raised. As regards advances from the Provincial Loans Fund, audit should see that the rules governing the administration of the fund and any subsidiary instructions issued thereunder are duly complied with. The following procedure has been laid down by the Government of India for dealing with cases in which advances sanctioned by them are found to have been utilised on purposes or objects other than those for which they were originally granted :—

- (a) Initial orders sanctioning advances from the Provincial Loans Fund will specify every productive scheme on which the advance may be spent.
- (b) A loan of a specified amount granted merely for expenditure on productive purposes or a lump sum amount granted for specified productive purposes may be re-appropriated from one productive purpose to the other within the total fixed for such productive purposes.
- (c) No re-appropriation shall be made by the local Government from productive to non-productive works or *vice versâ*, except as provided below :—
 - (i) If in any particular year the accounts show that expenditure on productive schemes has actually been less than the amount of the advance, the balance must necessarily be regarded as a diversion either to unproductive works or to the building up of cash balances. It will be the function of audit to report such a diversion to the Government of India through the Provincial Government.
 - (ii) The Provincial Government will forward the report to the Government of India with such comments as they may like to offer.

- (iii) The Government of India as administrators of the Fund will decide whether the particular diversion should be regarded as of a sufficiently permanent character to necessitate regularisation.
- (iv) If the diversion is only temporary and is occasioned by the inherent difficulty of estimating in advance the actual productive and other expenditure of a given year, no further action will be necessary. The original classification of the advance, the rate of interest and the term of repayment will, in that case, remain unaltered.
- (v) A permanent diversion will not, however, be permitted, and the local Government will be required on the next occasion on which they borrow from the Provincial Loans Fund to apply for additional loans equal in amount to the excess of the actual outlay on unproductive works over the advances originally taken for that purpose. This will not be necessary if the running account of loans shows that the diversions have in the meantime been made good by internal arrangement.
- (d) Funds borrowed on special terms for specific schemes shall not be subject to re-appropriation by the local Government.
- (e) As regards objects other than productive, the Government of India usually sanction advances from the Fund in lump sums, without specifying the objects on which the amounts are to be spent. A local Government is fully competent to reappropriate between different objects included in this category, subject only to the general limitation laid down in clause (d) above.

(2) Rule 2 (a) (i) of the Local Government (Borrowing) Rules should be interpreted as prohibiting expenditure from loan funds on any scheme or group of works the cost of which is less than Rupees five lakhs. The rules governing the grouping of individual works for the purpose of this rule should be the same as the rules which govern the grouping of works in order to determine the authority which is competent to sanction the total expenditure. The limit of Rupees five lakhs is not, however, applicable to capital expenditure—

- (a) on productive works,
- (b) in a Commercial Department which is working at such a profit as to fulfil the test of productivity imposed by the Secretary of State, or
- (c) on Commercial undertakings whose accounts are maintained on a Commercial basis.

This interpretation applies equally to expenditure met out of advances from the Provincial Loans Fund and the minimum limit of Rupees five lakhs referred to in connection with the unproductive expenditure met out of those advances can be relaxed only with the special sanction of the Government of India.

(3) As a general principle advances to Provincial Governments from the Provincial Loans Fund will not ordinarily be made except to meet a revenue deficit or to meet expenditure on an object on which moneys raised under the Local Government (Borrowing) Rules may be expended, and any departure from this principle will require the strongest possible justification.

(4) A loan may be sanctioned having as one of its objects the relief of general revenues from the burden of any previous capital expenditure met from such revenues in the absence of loan funds. In such cases it is permissible to transfer such expenditure from the revenue section to the appropriate major head in the capital section of the account. Transfers of this nature may also be made without the Provincial Government being required actually to borrow the requisite funds either from the Provincial Loans Fund or in the open market, *e.g.*, to relieve a difficult revenue situation. But such transfers can be permitted only if the expenditure transferred is of a capital nature for which funds may be borrowed under the Local Government (Borrowing) Rules, and the exercise by the Provincial Governments of the power to make such transfers will therefore be subject to audit scrutiny.

(5) In determining, for the purposes of canon 2, whether or not a work is productive, the test in the case of new works connected with existing schemes or works is whether the new work is to remain as a separate unit or to be absorbed into an existing unit. If the former, the test should be applied to the new separate unit; if the latter, to the resultant unit.

(6) In all accounts or estimates prepared with the object of determining the productivity of a work or scheme, the rate of interest to be taken into account for comparison with net revenue, which has been prescribed by the Secretary of State, is 6 per cent. per annum.

(7) The detailed rules for determining whether a work of irrigation, navigation, embankment or drainage should be classed as productive or unproductive (or remain so classed) are given in Statement A of Appendix 4 to the Public Works Account Code.

Higher Audit Functions.

149. In addition to the detailed work which must necessarily be performed by the auditor, is the important task of, what may be called, higher audit which devolves upon the more responsible members of the Audit office. It is not sufficient to see that audited rules or orders of competent authority have been observed. It is of greater importance to see that the general principles of legitimate finance are borne in mind not only by disbursing officers but also by sanctioning authorities, and that audit is conducted so as not merely to criticise their acts, but also to assist them, and consequently the legislature, in protecting the interests of the tax-payer, developing revenue and effecting economies in expenditure wherever possible. See Article 857.

NOTE.—Sanctions with a long period of currency, as well as sanctions of a permanent nature should also be reviewed periodically so that, if there is any reason to think that the administrative authority concerned should be invited to review the sanction, such action may be taken.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A member of a panchayat which has power, under Reg. VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

Protection of a Judge, acting judicially—Section 1 of the Judicial Officer's Protection Act, XVIII of 1850, enacts that "no Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction provided that he at the time, in good faith believed himself to have jurisdiction to do or order the act complained of and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant within the jurisdiction of the Court." *Kisam v Sandys*, 341 = 9 f A 152; L R 951, 36 C. 433 = 13 C. 1 Boulnois.

13 C 208, 433 = 13 C. 1 Boulnois.

Judge, meaning of—A Magistrate will be a judge only when he is exercising jurisdiction in a suit or a proceeding, that is to say, he is a judge only so far as that suit or proceeding is concerned, but he is not a Judge when he has not the seisin of the case in which he can give a definite judgment. This is clear from s. 4(2) of Cr. P. Code read with s. 19 of the Penal Code. 5 Pat. 110 = 7 Pat L T. 304 = 93 Ind. Cas. 963 = 27 Cr. L. J. 499 = A. L. R. 1926 Pat. 214.

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under Reg. VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following namely :—

"Public servant."

First — Every covenanted servant of the Queen ;

Second — Every commissioned officer in the military or naval forces of the Queen while serving under the Government of India or any Government ;

Third. — Every Judge ;

Fourth. — Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court ; and every person specially authorized by a Court of Justice to perform any of such duties ;

Fifth. — Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant ;

Sixth. — Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

Seventh. — Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth — Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience ;

Ninth. — Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty ;

Tenth. — Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Eleventh—"Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election "

Illustration.

A municipal commissioner is a public servant

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.—The word 'election' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election'

Amendments—clause (11) and explanation (3) have been added by Act 39 of 1920.

Notes.—Any person who takes upon himself the responsibility of a public servant is a public servant, whether he is paid or not. 8A 201.

The following persons were held to be public servants.—A peon in the service of salt department, 28 C. 344, a surveyor of a khas-mahal, 26 C. 158; a goods clerk, 9 P. R. 1898 Cr.; a Zamindari karnam, 21 M. 428, 15 M. 127; 1 Weir 128. A clerk appointed by a Sub-Registrar and paid out of the allowance given to the Sub-Registrar calculated on the number of documents registered is not a public servant within the meaning of this section. 32 C. 664=2 Cr. L. J. 512. A malguzar while he is holding an enquiry in the matter of damage done to the Government Forest, is not a public servant. 9 Ind. Cas. 669=12 Cr. L. J. 112. An unpaid apprentice of Government is not a public servant. 15 C. W. N. 319=9 Ind. Cas. 698=12 Cr. L. J. 117. A civil surgeon is not a public servant, 21 W. R. Cr. 9. The manager of a village under the Court of Wards is a public servant. A. W. N. 1885, 297. A Local Board Sircar is not a public servant. 12 C. W. N. 96=6 Cr. L. J. 393. A receiver appointed under s. 56 of Bengal Act VII of 1876 is not a public servant. 29 C. 236=6 C. W. N. 141. Labourers or menial servants employed to do work or labour on account of the Government are not officers, and do not fall within the definition of public servant. 17 M. 18=1 Weir 27. A Surveyor employed by the Collector in the Khas mahal department for making a survey of a certain portion of a water course is a public servant. 26 C. 158=3 C. W. N. 115. A Moharrir

of a police station ordered by the officer in charge to demand the weapons of offence from some accused persons, is a public servant. A. W. N. 1892 : 1. A conservancy *Moharrir* who receives a salary from the Municipal funds and whose duty is to write and despatch orders as directed by the superintendent of conservancy, is not a public servant. A. W. N. 1855, 175. A *moharrir* appointed under Bengal Act IX of 1862 is a public servant. 20 W. R. Cr. 49.

Clause (4).—A *naib nazir* of a Court (2 N. W. P. 291) and a peon acting under the delegation of a *naizir* in the execution of warrant of arrests are public servants. 22 C. 759, 2 B. L. R. (F. B) 21, § A 355; 22 C. 596. An officer of a Court of justice, executing judicial process is public servant. 10 W. R. 43.

Clause (6).—To bring a case within sub-section 6, there must be some cause or matter existing in dispute or controversy, in regard to which a competent public authority is desirous of a report to enable it to deal with the matter in dispute between the parties. A. W. N. 1896, 295. An arbitrator appointed to put up boundary pillars while a proceeding under s. 145 of the Cr. Pro. Code is pending before a Criminal Court is not a public servant. 30 C. 1084.

Clause (7).—Convict warders and overseers are public servants. 22 P. R. 1908 Cr., see also 7 W. R. 99 Cr.

Clause (8).—*Cha* is a public servant, whose duty it is to preserve the public health. 1 Weir 27, 6 M. H. C. App. 43, see also 1 Weir 134 = 1 Weir 621.

Clause (9).—The mere fact that a person is in the service of Government is not enough to

in some degree delegated
Quarter Master's clerk as
within the meaning of section
otherwise an officer in the
lic
r's
P.
9

means a person employed to exercise to some extent a delegated function of Government. he must be either himself armed with some authority or representative character, or his duties must be immediately auxiliary to those of some one who is so armed. 12 B. H. C. R. 1.

A lessee of a village who has undertaken to keep an account for its forest revenues, and pays a certain amount on that account, and the remainder for himself, is not an servant within the meaning of this :
 in the service or pay of Government
 the Penal Code, is one who is appointed to some office for the performance of some public duty. 28 C. 344 A peon of a Manager of an Estate under the Court of Wards is not a public servant 7 M 17. But Mr. *Aikman J.* held in 21 A. 127 that a manager of an estate employed under the Court of Wards is a public servant. A person appointed as a stamp vendor under the rule framed under Act V of 1860 which had been repealed substituted by Act V of 1861, is not a public servant Cr. C 36=Cr. Reg. 28-7-18
 person into a Police Station in meaning of s 21 of the I 122=10 Bur. L. T 170 An inspector in the finger bureau being in the service and pay of Government is a public servant, even if he is not performing the ordinary duties of a police officer 69 Ind Cas 445=23 Cr. L. J. 717 A karkun employed by a manager appointed under the Broach Thakurs' Relief Act to execute revenue process and receive rents is a public servant. Rat Un Cr. C 117. A poddar of a bank is not a public servant. 4 C. 376=2 Shome L. R. Cr 13 A peon attached to the office of the superintendent of the salt department is a public servant. 28 C. 394=4 C. W. N 798, 7 B. L. R 446

Explanation (2). The definition of public servant in this section includes Pat 423=3 Pat L. T 559=(1922) entitled to collect cesses as if they were public servants 68 Ind Cas 157=23 Cr. L. J. 557; 1923 Nag. 146. A P. W. D. lascar is a public servant. 21 L. W. 704=48 M. 867=A. I. R. 1925 Mad 1093=46 M. L. J. 192 A municipal inspector and a sanitary inspector appointed by a local board are public servants. 13 M 131, 21 M. 428. A local board sircar is not a public servant within the meaning of this section. 12 C. W. N. 96=6 Cr. L. J. 393 A clerk in the cess-collection department of a District Municipality, constituted under the Bombay District Municipalities Act is a "public servant" 10 Bom. L. R. 761=33 B. 213=8 Cr. L. J. 269=1 Ind. Cas. 869. A municipal servant

public servant. 8 B. L. R. App. 58

Explanation (2)—Any person whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the

position of a public servant, and performs those duties, and accepts those responsibilities, and is recognised as such, a person in such position must be regarded as a public servant. *subsequently that, notwithstanding and the recognition by others* A person in actual possession of the situation of a public servant is a public servant. Rat. Un. Cr. C. 388 = Cr. Reg. 40 of 1882. A *defacto* public servant in charge of records is a public servant A. W. W. 1891, 206.

22. The words "moveable property" are intended to include corporeal property of every description except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

Earth.—When "earth" is severed from "the earth" it becomes moveable property. 27 M. 531 = 14 M. L. J. 155. (F. B.). See also, 10 M. 255, 4 M. 228 15 B. 702. So also quarried stones are moveable property. 27 M. 531 (F. B.)

Papers.—Papers constituting part of the record in a criminal case is property 1 Weir 28

Letters.—As regards whether a letter addressed to a person is a moveable property, Vide 40 A. 119

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss." "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Causing trouble.—It cannot be said that removing a thing to put the owner to trouble is necessarily, and in every case, causing wrongful loss. 25 C. 416.

Wrongful gain—In 3 Mad. H. C. App. 6, the prisoner the pledgee of a turban, was convicted of criminal breach of trust for using that turban. The offence consisted of dishonestly using or disposing of property in violation of any direction of law as to the mode in which any trust affecting such property is to be discharged. The conviction

22-A W. N. 1812, 229. A person, who by falsely pretending to be the winner of a lottery prize, dishonestly induces the lottery officials to pay the prize to him does not cause "wrongful loss" to the rightful winner of the prize but causes a "wrongful gain" to himself by obtaining by false pretence what he is not legally entitled" to and, thereby acts "dishonestly" within the meaning of this section. 24 Ind. Cas. 963-15 Cr. L. J. 555. A servant who adulterates liquor and sells at the same price as unadulterated liquor acts dishonestly because he thereby gains by unlawful means money to which he is not legally entitled. Rat Un. Cr. C. 315-11 Reg. 53 of 1853. A tenant cutting trees standing on his own *Jira* *Tori* land and for which he has executed a *Katapa*, which gives the landlord only a claim for compensation for trees so cut, can not be said to be acting dishonestly within the meaning of this section. 15 Cr. L. J. 556-25 Ind. Cas. 335-11 Weir 528. Where a dishonest intention, as defined in this section is made out, it makes no difference in the prisoner's guilt for the offence of theft, that his act was not intended to procure any personal benefit to himself. 4 Bom. L. R. 936.

The accused, a Patwari, was charged with having made unauthorized entries in the *Khatani* *partal* book and *Jama bandi* in regard to the status of certain donees of land. The effect of those entries was to show the donees as *malkan qabsa*, i. e. as proprietors of their holding merely without any share in *Shamilat* whereas previously they were shown as full proprietors. The deed under which those persons acquired their rights made -- --

Shamilat and it was a moot point not specifying the *Shamilat* rights or does not carry with it the rights

and that the accused acted *bona fide*

though in disregard of the Revenue Rules. *Held*, that it was not shown that the making of the entries was likely to deprive the donees of any right to which they were entitled or that he made the entries dishonestly within the meaning of this section. 25 P. R. 1914 Cr.-16 Cr. L. J. 19-26 Ind. Cas. 323-35 P. W. R. 1915 Cr.=209 P. L. R. 1915. Where the accused was bound to have used four forged receipts for the payment of rent fabricated in lieu of genuine receipts which had been lost, he had not acted dishonestly. 7A. 459-A. W. N. 1885, 85; 7A. 403.

"Gain" must be taken to mean material gain. A. I. R. 1925 Rang. 9.

25 A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

"Fraudulently,"

Defraud.—The term 'defraud' is not limited in its meaning to deprivation of --

(F. B.) The expression in such a manner as to loss means not only ingement o

possessed by a person. 22 Cr L J 681. The word "fraudulently" denotes an intention to deceive. 5 C W. N. 897. "The expression 'intent to defraud' implies conduct coupled with intention to deceive and thereby to injure; in other words, 'defraud' involves two conceptions, namely deceit and injury to the person deceived, that is infringement of some legal right possessed by him but not necessarily deprivation of property. This would be so whether we accept the restricted interpretation of 'defraud' given by Mr. Justice Banerjee in *Queen Empress v. Muhammad Saeed Khan*, 21 A. 113, and by Sir James Stephen in his *History of Criminal Law*, Vol II, 121, Vol III, 187, or adopt the wider interpretation laid down in *Queen Empress v. Abbas Ali*, 25 C. 512, *Abdul Rajah v. Queen Empress*, (1895) P. R. 2 Cr; *Reg v. Toshak*, (1849) 4 Cox. C. C. 38." *Per Mookerjee J* in 38 C. 75=12 C. L J. 277=14 C. W. N. 1076=11 Cr L J 505=7 Ind Cas. 629. In construing this section the primary and not the remote intention of the accused must be looked at. 19 C 380. The word "fraudulently" must be taken to mean, as defined in this section "with intent to defraud" 22 C. 313. Where a person uses a *Sanad* which is not genuine, his intention can not be called "an intention to defraud" 10 C 584. In *Queen Empress v. Muhammad Saeed Khan*, 21A. 113 at p. 115 Mr. Justice Banerjee observed: "The terms 'fraud' and 'defraud' are not defined in the Indian Penal Code. Sir James Fitz-James Stephen in his *History of Criminal Law of England* vol II p 121, observes that 'whenever the words "fraud" or "intent to defraud" or "fraudulently" occur in the definition of crime, two elements at least are essential to the commission of the crime, namely, first, deceit or, an intention to deceive, or in some cases mere secrecy, and secondly, either actual injury or possible injury to the person deceived, either to actual injury or to that deceit or secrecy. 'This only or the principal intention of the person, the principal object in nearly all cases, is the principal and typically conclusive test as to the fraudulent character of a deception for criminal purposes is this. Did the author of the deceit desire any advantage from it which could not have been had if the truth had been known? If so, it is hardly possible that the advantage should not have had an equivalent loss or risk of loss to some one else, and if so, there was fraud.' Where, therefore, there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud." See also 15A. 210; 13 B. 515; 15 Bom. L. R. 708; 22 C. 313; 35 C. 450. "By fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from ill will towards the other is immaterial." *Haycroft v. Crasey*, 2 East. 92 (108)

The expression "intent to defraud" in this section means an intent to deceive in such a manner as to expose any person to loss or the risk of loss, and loss means not only a deprivation of property but covers

... a person. 65 Ind. Cas. 617—
 ... 185. The production of a
 ... the intent to make the Court
 believe that he was entitled to recover money upon the basis of the
 particular document produced, though may not be dishonest within the
 meaning of s. 24, may yet be fraudulent. 5 C. W. N. 897; see also 21
 P. R. 1895. The word "defraud" which is not defined in the code may or
 may not imply deprivation, actual or intended. 1 C. L. J. 469-32C.
 775. see also *Charles Nash* (1852) 1 Den. C. C. 493 (499); 25 C. 512
 (L. B.) In the last case *Maclean C J* observed at p. 521 "The word
 'defraud' is of double meaning in the sense that it either may or may not
 imply deprivation, and as it is not defined in the code and is not so far
 as we are aware, to be found in the code except in section 25, its
 meaning must be sought by a consideration of the context in which the
 word fraudulently is found." In order to do a thing fraudulently intention
 to cause wrongful loss is not necessary. 96 Ind. Cas. 850—A. I. R.
 1926 Mad. 974.

Intent to defraud—how proved.—An intent to defraud must
 always be proved beyond a reasonable doubt *Sharp v State*, 53
 N. J. L. 511, 21 Atl. 1026. *Carlisle v. State*, 76 Ala. 75. *Todd v State*,
 31 Ind. 514, 516. *Underhill's Criminal Evidence* p. 436 "The
 intent to defraud may be inferred from the facts and circumstances of the
 case, as, for example, from the fact that the representations were false and
 that the accused knew they were so when he made them. And where
 the alleged fraudulent transaction is at all complicated, it is competent
 to prove, not only the facts constituting the transaction itself, but also all
 facts and circumstances involved in the steps preliminary thereto, and
 all facts which tend to show the course of dealing between the parties
 before or after the date of the offence laid in the indictment. The
 widest latitude is allowed. All available information should be received
 and no circumstances should be excluded which will throw or tend to
 throw, any light upon the intent of the parties, or upon the falsity of the
 representations. An intention upon the part of the defendant to pay
 for the property obtained, or to return the money procured by false
 pretences, is immaterial. Hence the defendant cannot prove, to rebut
 the intent to defraud, that he promised, to repay, or that he was able or
 willing to repay, wanted to procure work so as to earn money and to
 repay, or actually did repay, persons from whom money had been
 obtained. Nor can he prove that, in procuring the money, he was
 acting under legal advice unless he shows, first, that he stated to the
 attorney who advised him, fully and fairly all the facts, and unless it
 also appears that he acted in perfect good faith"—*Underhill's Criminal
 Evidence* s. 437.

Evidence of other similar crimes.—Evidence of similar offences,
 involving the making of other false representations, is admissible against
 the prisoner to show that he was aware of the falsity of the statement

made by him in the present instance, and that, knowing them to be false, he made them with intent to deceive *Hutchesson v. State*, 35 S. W. 375, *Martin v. State*, 36 Tex. Cr. 125 = 35 S. W. 976; see also 16 B. 414; 43 C. 783 = 20 C. W. N. 262, *Reg. v. Ollis*, (1900) 2 Q. B. 758. Evidence of similar false pretences is particularly relevant when it appears that the fraudulent act for which the accused is on trial does not stand alone, but is a part of a scheme, not merely to defraud one individual, but to swindle the community at large *Rafferty v. State*, 91 Teun. 655, 666 = 16 S. W. 728; *Cornell v. State*, 85 Md. 1 = 36 Atl. 117.

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

Notes.—A man may be indicted for perjury in swearing that he believes a fact to be true, which he knows to be false *R. v. Pedley*, 1 Leach, 327. The words "reason to believe" have been used in ss. 411 to 414. In a case of receiving stolen property the correct test of a person's guilt is whether when the property came into his possession he knew or had reason to believe that it was stolen property. Mere suspicion is not enough. 21 Ind. Cas. 383 = 1913 M. W. N. 696 = 14 Cr. L. J. 591, see also 6 B. 402.

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

Notes.—"The term 'possession' has to be interpreted in the light of s. 27 which by virtue of section 7 is applicable wherever the term is used in the code. Section 27, abolishes the distinction recognised in English Law between possession and custody." *Per Mookerjee J.* in 21 C. W. N. 33 (51) = 24 C. L. J. 400 = 44 C. 477. So an accused charged under sections 2 & 3, may be proved to be in possession within the meaning of that section, if he is in possession in either of the two modes, namely, (a) he may be in possession of the coin himself, or (b) he may be in possession, because his wife, clerk or servant is in possession of the coin on his account. *Ibid.* But in order to make the master liable the possession of the servant must be on account of his master. 69 Ind. Cas. 657 = 20 A. L. J. 855 = 23 Cr. L. J. 729 = A. L. R. 1923 All. 33 = 9 O. & A. L. R. (A) 27. So where a house is in wife's possession on account of her husband, it is the husband's possession within the

meaning of this section 57 Ind. Cas. 550—22 Cr. L. J. 118—8 P. W. R. 1921 Cr. Where a man furnishes a house for his mistress' occupation, he may reasonably be presumed to be in possession of all articles therein

inapplicable
contrary to
tion is such

that he might well remain in ignorance that it was in his mistress' possession. To raise the presumption under this section something more than mere possession by the wife or mistress must be proved. 22 Ind. Cas. 748—20 P. R. 1914 Where article found in a house is not in exclusive possession of any one member, the presumption is that the possession of the article is with the head of the family. A. I. R. 1927 Lah. 272 Indian Law does not authorise distinction between possession and custody. Where the possession is punishable, the possession must be with knowledge. A. I. R. 1928 Lah. 272.

28 A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1—It is not essential to counterfeiting that the imitation should be exact

Explanation 2—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.

Amendments—These two explanations have been substituted for the original by the Metal Tokens Act (I of 1889), s. 9.

Counterfeit—Where the resemblance is such that it may deceive the people, it falls within the definition 19 C. W. N. 957, 30 A. 93

Elements of the Crime—It must be shown to the satisfaction of the jury that the defendant altered the note with the intention to defraud the person receiving it, or some other person through him, and that the note uttered was a counterfeit. The knowledge of the accused that he was passing counterfeit money must be shown. Evidence that the accused was seen several times in company with another person when the latter passed counterfeit bills, and evidence to show that the accused and some third person had conspired to pass counterfeit money, or that a counterfeit had been passed by some person resembling the

defendant, or that he had, about the same time, knowingly uttered a counterfeit, or that he had been indicted and convicted at another time for the same offence, is always admissible to show the criminal intent.

Illustration.—A person who has received other counterfeit money, and is charged with uttering a counterfeit, may show that he received the money solely for the purpose of using it as evidence of a criminal intent.

Evidence s. 432.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance, the letters, figures, or marks, are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document

A power-of-attorney is a document

A map or plan which is intended to be used, or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to B, and the words "I have received of B the sum of Rs. 100" are written over the signature of A. The endorsement is explained by mercantile usage, and is deemed to be made in the same manner as if the words had been written over the signature.

Notes.—Where a draft petition was prepared with the intention of being used as evidence of a matter, it was held that it fell within the terms of this section. 10 W. R. Cr. 61—2 B. L. R. 12. A document is made within section 464 I. P. C. even when some only of the intended

executants sign it 41 M. 559—43 Ind. Cas. 593—19 Cr. L. J. 177. Letters or marks imprinted on trees and intended to be used as evidence that the trees had been passed for removal by the ranger are documents within the meaning of this section. 27 Bom. L. R. 599—87 Ind. Cas. 835—26 Cr. L. J. 1014—A. I. R. 1925 Bom. 327.

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it the endorsement is a "valuable security."

Valuable security.—An account stated in which a balance is admitted to be due in the hand-writing of the prisoner is a valuable security. 2 M. H. C. R. 247. An unregistered document, where registration is compulsory is a valuable security 25 C. 207. Even an unstamped document was held to be valuable security in certain cases. 12 M. H. C. App. 26, 12 M. 148, 7 M. H. C. App. 26, Vide 11 W. R. 15 where a deed of divorce was held to be a valuable security. See also 3 Pat. L. J. 385, 43 Ind. Cas. 598. A document, which upon certain evidence being given, may be held to be invalid but on the face of it creates, or purports to create, a right in immoveable property, is a valuable security. 90 Ind. Cas. 913—26 Cr. L. J. 1617—23 A. I. J. 990. An incomplete document bearing a forged signature of the executant is a valuable security. 38 A. 430. A decree does not fall within the definition of valuable security. 39 C. L. J. 122. Also a receipt of acknowledgment of an insured parcel is not a valuable security. 1 Pat. L. J. 391. The title page of a partnership Account book if duly signed by all the partners is a valuable security. 38 C. 68. A Kabuliata is a valuable security even when its terms have expired 88 Ind. Cas. 283—26 Cr. L. J. 1118—A. I. R. 1925 Nag 337. A counterfoil of a paying-in-slip which purports to be an acknowledgment of receipt of a sum of money by the Bank comes within the definition of "valuable security" 29 C. W. N. 868—29 Ind. Cas. 248—26 Cr. L. J. 1304.

"A will,"

31. The words "a will" denote a any testamentary document.

Notes.—The word 'testament' is derived from *testatio mentis*, it testifies the determination of the mind. "A will" says Jarman "is an instrument by which a person makes a disposition of his property to take effect

after his decease, and which is in its own nature ambulatory and revocable during his life" *Jarman* 1st Edition p 11 A will is the aggregate of a man's testamentary intentions so far as they are manifested in writing, duly executed according to the statute. *Lemage v. Goodban*, L. R. 1 P. D. 57, *Green v. Tribe*, 9 Ch. D. 231

"Words referring to acts
include illegal omissions

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

1 **Illegal omission**—This section provides that in every part of the code except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omission: 1 Weir. 29; 20 B 394.

The expression "gross neglect" find no place in this Act. The codified criminal law of this country does not render a mere casual inadvertence of duty criminal, but such neglect of duty as either directly results in loss of life or injury to person (ss 304 A, 337, and 338 and in certain special cases) or such neglect as endanges life or property (ss 279 to 289 I. P. C.), ss 102 and 128 of the India Railways, Act. 18 S. L. R. 199—A I R 1925 Sind 233—27 Cr. L. J. 257—92 Ind Cas. 433

33. The word "act" denotes as well a series of acts as a single act, the word "omission" denotes as well a series of omissions as a single omission.

Notes.—Where the words in a statute used in connection with an offence or a civil wrong refer to acts done, they must be held to extend to illegal omissions. 1 P. L. T. 269—(1920) Pat. 193—58 Ind Cas. 749.

34. When a criminal act is done by several persons in furtherance of the common intention of all each of such persons is liable for that act in the same manner as if it were done by him alone.

Amendment.—The present section has been substituted for the original by Act 27 of 1870, s 1.

Scope.—This section merely lays down a principle of liability and does not create a distinct offence. 22 Cr. L. J. 394, 24 Cr. L. J. 763. In order to justify the application of this section evidence of some distinct act by the accused, which can be regarded as part of the criminal act in question, must be required. (1922) M. W. N. 800 This section applies only to acts done by several persons with a common intention. It has no application to a case of several persons starting with a common intention to commit an offence where only one of them

commits the intended offence. In such a case the rest of the confederates are guilty of abetting the offence committed by one of them. 21 Cr. L. J. 797 Where a criminal act or series of criminal acts is committed by several persons in combination it is necessary to ascertain first the common intention of all, and secondly the individual intention of each of the accused as disclosed by the circumstances of the case. 21 Cr. L. J. 678 This section deals with the doing of separate acts similar or diverse by several persons, if all are done in furtherance of a common intention, each person is liable for the result of them all as if he had done them himself. 1925 P. C. 1.

The mere circumstance of a person being present on an unlawful occasion does not raise a presumption of that person's complicity in an offence then committed. 14B. 115. Unpremeditated acts done by a private individual, which go beyond the object and intention of the original offence, should not implicate persons who take no part in that particular act. A. W. N. (1887) 236 It is a necessary condition to make a person liable under this section, that the common intention must cover the act done by all the several persons. 14 Bur. L. R. 264. The essence of this section is common intention. 16 C. L. J. 440. 3 P. L. W. 120, 10 L. B. R. 117 25 C. W. N. 24, 9 A. L. J. 180 Where persons go with the intention to prosecute a common object, each and every one becomes responsible for the acts of each and every other in execution and furtherance of their common purpose. But a distinction has to be drawn between unpremeditated acts done by a particular individual which go beyond the object and intention of the original offence and premeditated acts of the parties as shown by their conduct during the affair. 19 Ind. Cas. 497. This section refers to cases in which several persons join to do an act and intend to do that act. It does not refer to cases where several persons intend to do one act and some one or more of them do an entirely different act. This section is based on common intention. 86 Ind. Cas. 475=26 Cr. L. J. 827=A. J. R. 1925 Cal. 913 In order to convict a person with the aid of this section, it is not necessary that that person should actually with his own hand commit the criminal act. If several persons have the common intention of doing a particular criminal act and if in furtherance of that common intention all of them join together or aid or abet each other in the commission of the act then although one of these persons does not actually commit the act, if he helps by doing any of the acts of the act he would be liable under this section. 26 Cr. L. J. 115. 1925 P. C. 1=48. W. N. 181=53 I. A. R. 1925 P. C. 1=48. See also 85 Ind. Cas. 822, 89 Ind. Cas. 718. In case of an attack by several persons all are responsible for results. 83 Ind. Cas. 111.

after his decease, and which is in its own nature ambulatory and revocable during his life" *Jarman* 1st Edition p 11. A will is the aggregate of a man's testamentary intentions so far as they are manifested in writing, duly executed according to the statute. *Lemage v. Goodban*, L. R. 1 P. D. 57, *Green v. Tribe*, 9 Ch. D. 231

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33. The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

Notes.—Where the words in a statute used in connection with an offence or a civil wrong refer to acts done, they must be held to extend to illegal omissions. 1 P. L. T. 269—(1920) Pat. 193—58 Ind Cas. 749.

34. When a criminal act is done by several persons in furtherance of the common intention of all each of such persons is liable for that act in the same manner as if it were done by him alone.

Amendment.—The present section has been substituted for the original by Act 27 of 1870, s. 1.

Scope.—This section merely lays down a principle of liability and does not create a distinct offence. 22 Cr. L. J. 394, 24 Cr. L. J. 763. In order to justify the application of this section evidence of some distinct act by the accused, which can be regarded as part of the criminal act in question, must be required. (1922) M. W. N. 800. This section applies only to acts done by several persons with a common intention. It has no application to a case of several persons starting with a common intention to commit an offence where only one of them

the accused in furtherance of the common act must be proved. 72 Ind. Cas. 360=A I R 1923 Mad 187. 1921 M. W. N. 500; 2 Bur. L. J. 142. 99 Ind. Cas. 705=7 Pat. L. T. 388.

Section 34 has no application in the construction of s. 398. A. I. R. 1923 Bom 52.

Abetment—This section does not involve abetment and therefore does not imply any conspiracy and does not require proof that any particular accused was responsible for the commission of the actual offence. 18 C. W. N. 580.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

the act were done by him alone with that knowledge or intention.

Scope—This section makes it clear that, where a number of persons join in an act which is criminal only by reason of its being done with a certain knowledge or intention, each person is liable for the act to the extent of his knowledge or intention, in other words, that the Court or jury have to consider what was the knowledge or intention with which each person joined in the act. 31 C. W. N. 314=10 Ind. Cas. 718=28 Cr. L. J. 334=45 C. L. J. 131=A I R 1927 Cal 324 "Where A and B unite in assaulting and resisting C, a public servant, in the execution of his duty, A, not knowing C's character, may be guilty only of an assault, but B, if he knowingly resists C, may commit the offence of obstructing a public servant in the discharge of his public functions. If an act which is an offence in itself and without any reference to any criminal knowledge or intention on the part of the doers is done by several persons, as if several commit a nuisance by carrying on an offensive trade, each of such persons is liable for the offence."—*Morgan and Macpherson*

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect, partly by an act, and partly by an omission, is the same offence.

Illustration.

A instigates B to murder C.	by illegally omitting to give
Z omits to inform the police of the murder.	omitted murder.
	ect partly of an act or partly
	C.W.N. 170=38 C. L. J. 41.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(a) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison
 Co-operation by doing one of several acts constituting an offence, dies from the poison. Here A and B, and as each are both guilty

(b) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, effect by illegally omitting, each to furnish Z with food supplied to the prisoners. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply food to Z, which Z is much reduced in strength by. A is dismissed for neglecting to cause his death. A is dismissed

not co-operate with B, A

Notes—Where a number of persons, acting in concert with one another, caused death by beating the deceased with *lathis*, and the attack by them was a single and indivisible thing, *held* that all of them must be taken to have intended to cause death or to have had every reason to know that the probable result of their joint act would be death. 35 A. 506=11 A. L. J. 804; 14 C. L. J. 615; 21 Ind. Cas. 663; 15 Bom. L. R. 303; 19 Ind. Cas. 331=14 Cr. L. J. 235; 40 A. 686; 47 Ind. Cas. 805, see also 73 Ind. Cas. 769=24 Cr. L. J. 673=A. I. R. (1924) All. 78. By section 37, when an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of these acts, either simply or jointly with any other person, commits that offence. 29 C. W. N. 181 (189)=52 C. 197=41 C. L. J. 240=85 Ind. Cas. 47=26 Cr. L. J. 431 (P. C.); see also 28 C. W. N. 170=38 C. L. J. 411.

Persons concerned in criminal act may be guilty of different offences

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

Notes.—When several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. 29 C. W. N. 181 (189)—52 C. 197—45 C. L. J. 240—27 Bom. L. R. 148—23 A. L. J. 314 P. C.

Cases.—Where in a quarrel, one accused person hit the deceased with a stick and another with an axe and the latter caused death and there was no proof of common intention, held that the latter was guilty of culpable homicide while the former was guilty only of grievous hurt—A. W. N. 1882, 23

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it or by which at the time of employing those means he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act, yet, if he knew that he was likely to cause death, he has caused death voluntarily.

Voluntarily.—The English law by means of an artificial presumption viz, that a man is presumed to intend the natural or probable consequences of his own act, gives to the words which denote intention, the meaning here annexed to "voluntarily"—*Morgan and Macpherson* 21.

40. Except in the chapter and section mentioned in clauses "Offence", two and three of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, "Chapter VA" and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 222, 223, 224,

225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word "offence" denotes a thing punishable under this Code or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months, or upwards, whether with or without fine.

Amendments—S. 40 has been substituted for the original by Act 17 of 1870 s. 2. The figures 64, 65, 66 and 71, in the second clause, have been inserted by Act 8 of 1882, and the figures 67 by X of 1886 s. 21 (1).

The words "Chapter VA" were inserted by Act 8 of 1913.

S. 114—Section 114 has been intended to special law by this section 29 C. 496

Notes—"The word 'offence' denotes a thing made punishable by this Code. It is obvious that the word 'punishable' is here used according to a common idiom for 'rendering a person liable to punishment', for it is obvious that, in the strict and primary usage of the word nothing is punishable, and no person since Xerxes except a child with his doll, has ever supposed otherwise. The expression therefore, is incomplete"—*Per Holloway J* in 3 Mad. H. C. Rep. App. 11 at p. 12. According to *James J.* 'a thing made punishable' means an act or omission which by the Code is constituted one to which a punishment is attached.

Special law—The Whipping Act is a special law. 22 Ind. Cas. 157 = 7 L. B. R. 63.

"Special law". 41. A "special law" is a law applicable to a particular subject.

Notes—Special laws such as the Excise, Opium, Cattle Trespass Acts, etc. creating fresh offences other than these specified in the Act. 7 L. B. R. 63 = 22 Ind. Cas. 147.

"Local law." 42. A "local law" is a law applicable only to a particular part of British India.

Notes—All the rules framed under a local law is not necessarily included in it. 23 P. R. 1894.

43. The word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Illegal."

"Legally bound to do"

Notes—An omission by a *Zaildar* or his *Sarbarah* to give information of a riot in his village is not an illegal omission. 19 P. R. 1886 Cr. Where a Deputy *Zaildar* stated in reply to an official question that he had no lands in a certain place and also a false statement to the same effect before the principal Assistant Collector, *held*, that he could not be convicted of an offence under s. 177, as he was not legally bound "to furnish such information within the definition given in s. 43". 14 M. 484—1 M. L. J. 741—1 Weir 109. The omission to fence a well in private premises at a distance of only eight yards from the highway, and open to it is not "illegal" as defined by this section, and does not therefore constitute an offence. 6 M 280—1 Weir, 245—7 Ind. Jur. 247. Submitting false return to a superior officer is illegal, 14 M. 484

44. The word "injury" denotes any harm whatever illegally caused in any person in body, mind, reputation, or property.
 "Injury."

Notes.—The term "injury" as used in section 285 includes any harm illegally caused to the property of any other person, as is not confined to injury to the person only. 5 B. H. C Cr 57. It is simply an act contrary to law. 2 M. H. C. R. 158 (160). A false charge against a person to a police may subject a person to a substantial injury. 5 C 231. Threat to ruin another with cases, where the cases are not false, does not amount to injury. 30 C. 418—7 C. W. N. 116, see also 27 C W N. 479. An unlawful detention of a cart causes injury to the cart-owner. 1 Weir 447. The term "property" is applicable only to something which is in existence. 17 P. R. 1898 Cr; see also 2 M. 74 (F. B)

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.
 "Life."

46 The word "death" denotes the death of a human being, unless the contrary appears from the context.
 "Death"

47. The word "animal" denotes any living creature other than a human being.
 "Animal."

48 The word "vessel" denotes any thing made for the conveyance by water of human beings or of property.
 "Vessel."

49. Wherever the word "year" or the word "month" is used it is to be understood that the year the month is to be reckoned according to the British calendar
 "Year": "month."

50. The word "section" denotes one of those portions of a chapter of this Code which, are distinguished by prefixed numeral figures

"Section."

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

"Oath."

52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

"Good faith"

Good faith.—The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. The law does not exact the same care and attention from all persons regardless of the position they occupy 12 B 377. All acts must be done with due care and attention 21 M. 249. What is done by a person who in good faith believes himself to be bound to do it, or what is done in good faith for a man's benefit, though in fact it causes harm to him, is not an offence (sections 76 and 88). This explanation of good faith shews in what sense the above and other similar class are to be understood. Mere good faith in the sense of simple belief, actual belief, without any grounds of believing, is not sufficient the belief must be a reasonable not an absurd belief, that is, there must be some reasonable ground for it. Good faith in fact or belief requires due care and attention to the matter in hand. The law cannot mark, except in this vague way, the amount of care and attention requisite, but if a man takes upon himself an office or duty requiring skill or care, and a question arises whether he acted in good faith, he must shew not merely a good intention, but such care and skill as the duty reasonably demands for its due discharge. The degree of care requisite will vary with the degree of danger which may result from the want of care; where the peril is the greater the care must be greater.

Simple belief may be criminal intention, or public servant may have a better foundation but is apt to be very foolish in apt so vague and unsafe a criterion —

stopping child in the way to be haunted, and his death by inflicting

he was properly convicted under s 304 A, as he did not act in good faith, i.e., with due care and attention. 11 P. R. 1838 Cr. A man cannot be convicted of perjury for having acted rashly and credulously and

having failed to make reasonable enquiry with regard to the facts alleged by him to be true. It must be found that he made some statement which he knew or believed to be false or which he did not believe to be true. This finding should be arrived at independently of the definition of good faith in section 52 of the Code. 13 A. L. J. 550—36 A. 362—15 Cr. L. J. 579—25 Ind. Cas. 331. "Due care and attention" implies genuine effort to reach the truth and not the ready acceptance of ill-natured belief. 17 Bom. L. R. 82—3 Bom. Cr. C. 15—16 Cr. L. J. 177—27 Ind. Cas. 657. A sentence of fine imposed upon more than one prisoner individually and collectively is not a proper sentence. 1 Weir 30—5 M. H. C. App. 5. Where an offence is punishable with imprisonment and fine, fine need not necessarily be imposed. A. L. R. 1925 Oudh 109.

CHAPTER III. OF PUNISHMENTS.

53. The punishments to which offenders are liable under "Punishments." the provisions of this Code are—

First.—Death ;

Secondly.—Transportation ;

Thirdly.—Penal servitude ;

Fourthly.—Imprisonment,* which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour ;

(2) Simple ;

Fifthly.—Forfeiture of property ;

Sixthly.—Fine.

Notes—The punishments provided for offences by this Code are contained in this chapter. *Macpherson, Every c*
remitting punishment
1884, 219. A sentence
24 M. 13. In the case of a technical offence, a nominal sentence is quite
sufficient to meet the ends of justice. 16 P. R. 1910 Cr.—6 Ind.
Cas. 932.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

50. The word "section" denotes one of those portions of a chapter of this Code which, are distinguished by prefixed numeral figures

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he was properly convicted under s 304 A, as he did not act in good faith, i.e., with due care and attention. 11 P. R. 1833 Cr. A man cannot be convicted of perjury for having acted rashly and credulously and

having failed to make reasonable enquiry with regard to the facts alleged by him to be true. It must be found that he made some statement which he knew or believed to be false or which he did not believe to be true. This finding should be arrived at independently of the definition of good faith in section 52 of the Code. 32 A. L. J. 550=36 A. 362=15 Cr. L. J. 579=25 Ind. Cas. 331. "Due care and attention" implies genuine effort to reach the truth and not the ready acceptance of ill-natured belief. 17 Bom. L. R. 82=3 Bom. Cr. C. 15=16 Cr. L. J. 177=27 Ind. Cas. 657. A sentence of fine imposed upon more than one prisoner individually and collectively is not a proper sentence. 1 Weir 30=5 M. H. C. App 5. Where an offence is punishable with imprisonment and fine, fine need not necessarily be imposed. A. I. R. 1925 Oudh. 109.

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Fifthly.—Forfeiture of property ;

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Notes.—The punishments provided for offences by this Code are contained in this chapter, but the mode of inflicting, commuting and remitting punishments belong to the law of procedure—*Morgan and Macpherson*. Every conviction must be followed by a sentence. 1884. 219.

24 M. 13

sufficient to make the laws of justice 10 A. R. 1910 Cr.=6 Ind. Cas. 952.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment any other punishment provided by this Code.

Commutation of sentence of death.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Commutation of sentence of transportation for life.

56 Whenever any person, being a European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provision of Act XXIV. of 1855 :

Sentence of Europeans and Americans to penal servitude.

Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

Proviso as to sentence for term exceeding ten years but not for life.

Amendment—This proviso has been added by the Indian Penal Code Amendment Act 27 of 1870 s 3

Penal servitude—The punishment of penal servitude is only applicable to Europeans and Americans. 19 M. 483—1 Weir 298.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Fractions of terms of punishment.

58 In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

Notes.—The Supreme Government appoints a place or places of transportation within the British territories, and the local governments give orders for the removal of persons sentenced to transportation to the places so appointed—*Morgan and Macpherson.*

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code, such offender is liable to imprisonment.

1860: Act XLV. s. 59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code, such offender is liable to imprisonment.

one of transportation 1 W R Cr Letters to. This section has no application to sentences under a local or special law, but only to offenders convicted under the Penal Code 11 M L J. 127. But the commutation of two sentences one of four years' rigorous imprisonment and the other of three years' rigorous imprisonment to one of transportation for seven years is illegal 2 Cr L J 473. Transportation must not exceed the maximum term of imprisonment, 45 L. A 35 (P C), 1 A 43 (F B). The restriction imposed by s. 35, Cr Pro Code must be read with sections of the Penal Code which prescribe the limits of punishments for different offences. L. B R. (1893—1900), 478. Transportation can not be awarded in default of payment of fine 17 P. R. 1880 Cr., 8 Ind Cas. 985—25 Cr L J. 1161. This section enacts a general rule to the effect that in the case of offences for which no transportation is specially mentioned as a punishment and which are punishable with imprisonment for a term of seven years or upward, it is competent to the Judge to substitute a sentence of transportation as a substantive sentence for that of imprisonment. This section does not authorise the substitution of transportation for the imprisonment provided by the Court in default

116 This one offence is made up malgated 3 W R. Cr.

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instance specifically provides transportation for any term short of life as a punishment and s. 59 is the only authority for passing sentences of transportation for short periods 14 P L R. 1904—1 Cr L J. 89—31 P. R. 1903 Cr. The proper procedure in cases where a Judge desires to pass a sentence of transportation for a term is to pass a sentence of rigorous imprisonment and then, under this section, commute the sentence to one of imprisonment. L. B R (1893—1900) 482. but see 1 L. B R 292 by which this is overruled. A sentence of transportation cannot, under s. 59 I. P. Code, be for a period less than 7 years whatever might be

charge. 8 W. R. Cr. 2. A period of ten years is the maximum which a sentence of transportation under ss. 412 and 59, must not exceed. 5 W. R. Cr. 16. In order to make this section applicable, (1) the offence must be such as could be punished with seven years' imprisonment or more; (2) no sentence of imprisonment for a shorter period than seven years can be passed in any case. 4 L. B. R. 65—6 Cr. L. J. 290, see also 17 P. R. 1880 Cr. This section has no application to sentences under a special or local law. 11 M. L. J. 127.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

61. *[Sentence of forfeiture of property—Repealed by Act 16 of 1921.]*

62. *[Forfeiture of property in respect of offenders punishable with death, transportation or imprisonment:—Repealed by Act 16 of 1921]*

63. Where no sum is expressed to which a fine may extend the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

* Object —The difficulty of framing any general rule for the limiting of fine has always been felt. The rule here laid down, that excessive fines shall not be imposed, follows the words of the Bill of Rights (1 Will and Mary St. 2. C. 2) In cases which are not very heinous, the amount of fine, which the Courts may impose is, as has been shown above, limited by the Code; but in serious cases the amount is left to their discretion.—*Morgan and Macpherson.*

Civil cases —“ In every case in which fine is part of the punishment of an offence, it ought to be competent to the tribunal which has tried the offender acting under proper checks, to award the whole or part of the fine to the sufferer, provided that the sufferer signifies his willingness to receive what is so awarded in full satisfaction of his civil claim for separation. If the Criminal Court shall not make such an award or if the sufferer shall not be satisfied with such an award, he must be left to his Civil action. But if, in such an action, he recovers damages, the fine ought, in our opinion, to be employed, as far as the fine will go, in satisfying those damages. The plan we propose would not be open to the strong and indeed unanswerable objections which Mr. Livingstone has

urged against the plan of blending a civil and criminal trial together. Yet we think it likely that our plan could in a great majority of cases render a civil proceeding unnecessary. We are happy to be able to quote the high authority of Mr Livingstone in favour of the doctrine that every fine imposed for an offence ought to be expended, as far as it will go, in paying any damages which may be due in consequence of injury caused by that offence".—*Note A.*

Amount—A fine should be fixed with due regard to the circumstances of the case in which it is imposed and the condition in life of the offender. 18 P R 1873 Cr 20 P R 1895 Cr U B R. (1897-1901) Vol. 1, 244 The Court of session and the High Court can inflict fine to any amount. 7 W R 37 An order for daily fine is not legal 25 W R. 9. 20 W R 64. 27 C 595 15 W R 44 under no circumstances is a Magistrate justified in passing or confirming a sentence of fine upon the accused which he has every reason to believe the accused cannot possibly pay L B R. (1872-1892) 433 The intention of the framers of the Penal Code was that fines inflicted should not be disproportionate to all possible means of the criminals, if Magistrate should not be influenced by the consideration that the criminals, though poor, are backed up by influential persons. Rat. in Cr C 553=Cr. Rg 34 of 1891.

64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment ;

and in every case of an offence punishable *with imprisonment or fine, or with fine only*, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

Act VIII of 1882.—Section 1 of Act VIII of 1882, extends this section to all local and special Acts whether passed before or after the 1st July 1868. It extends to General Acts of prior to 1868 L. B R (1872-1892) 433 Cr. L. J. 327

Imprisonment in default of fine—The sentence of imprisonment in default of fine should bear some reasonable proportion to the amount of fine L B R (1872-1892), 353 An offence under a special law is not punishable with imprisonment in default of payment of fine under this section. The law does not require that imprisonment

special law like the Bombay Gambling Act. 20S L R. 31—91 Ind. Cas. 394—27 Cr. L. J. 90—A. I. R. 1926 Sind 144

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months or at any later time while A continues in imprisonment, A will be immediately discharged.

Notes—Having undergone a portion of the alternative imprisonment provided for non-payment of fine a person is not discharged from payment of the proportionate portion of the fine. A. W. N. 1832, 85. A sentence of imprisonment in default of fine is illegal in a conviction under s. 3 of Act XXXI of 1850, since s. 69, I. P. Code, applies only to conviction for offences under the Penal Code. Rat. Un Cr. C. 40.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which, after his death, be legally liable for his debts.

Notes—The fact of a Magistrate having written off a fine as irrecoverable is no bar to the realization thereof at any time within the period allowed by law, if it subsequently appears that the person from whom the fine was due, has acquired the means of paying it. 3 A. L. J. 818. This section is not applicable to immoveable property. 51 B. H. C. R. 63, 20 C. 478. Even after imprisonment in default of payment of fine, the property of the accused may be seized by distress and sold. 3 W. R. Cr. 61; 23 A. 497. After a lapse of seven years a prisoner's property is saved but he may be personally arrested. Rat. Un. Cr. 207.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided

Limit of punishment of offence made up of several offences

parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so ex-

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would, by itself or themselves 'constitute, an offence, constitute, when' combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Illustrations.

(a.) A gives Z. fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b.) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Amendment.—The clauses quoted have been added by Act 8 of 1882, S. 4.

Scope.—This section contemplates several punishments for offence against the same law and not under different laws. 19 Cr. L. 157; 1 Pat. L. J. 373. The infliction of separate punishment is not violation of the law, provided that the aggregate punishment is not in excess of what the Court could inflict for either of the off

4 C. L. J. 90 But the conviction of prisoners for two offences, when the one offence formed an integral portion of the other, is illegal 1 Agra H. C. R. 31; or in other words, where, substantially, only one offence has been committed, the several acts which, taken together, constitute that offence, cannot legally be treated as separate offences. 12 W. R. 2=3 B. L. R. (A. C.) 14.

Notes.—Separate sentence can be awarded to run consecutively for participation in separate dacoities and to these can also be added participation in conspiracy A 1 R 1928 the death of two persons by one at the same time and place, he can act under this section Rat Un.

Cr. 852. The prisoner at the same time and place stole some cattle which happened to belong to different owners. The Magistrate tried the act as constituting three offences, and on the prisoner's plea of "..." on each. Held, section L. B. R. (1872— in one continuous transaction the first clause of this than one of the offences

charged. 11. D. N. (1872—1892) 440. Distilling spirits and possessing spirits obtained by such distillation are not distinct offences and a double sentence is prohibited. U. B. R. 1904, 1st Cr. Penal Code 1—1 Cr. L. J. 552 The phrase constituting an offence as it occurs in the section must be understood to refer to the definitions of the offences as enunciated in the code itself, irrespective of the identity or non-identity whereby several acts are proved. 10 A. 58=A. W. N. 1887, 274.

Whether there are different definitions of the same offence or whether the same offence is provided for in different sections or by separate and different provisions in the code, the accused under no circumstances, should be sentenced to a greater punishment than the highest penalty contained in one of the provisions under which he may be convicted. 14 A. L. J. 738=17 Cr. L. J. 418=35 Ind. Cas. 978 An accused can not in addition to being convicted under s. 147 be also convicted under s. 375 although it be shown that he himself caused grievous hurt to the opposite party. 3 Pat. L. J. 641=48 Ind. Cas. 677, see also 51 C. 79=28 C. W. N. 347=81 Ind. Cas. 593=25 Cr. L. J. 945; 31 C. W. N. 532=28 Cr. L. J. 484=101 Ind. Cas. 650. House breaking by night is not a necessary concomitant of the offence of rape though it may be the main and in fact the only object the accused may have in view. 75 Ind. Cas. 77=24 Cr. L. J. 877=1923 Lah. 291. Separate sentences for abetment of separate offences is quite legal. 1923 Cal 403 Where a person is proved to have taken part in a particular dacoity and also to have been a member of a gang of dacoits, separate sentences could be passed on him. 10 O. & A. L. R. 938. The imposition of separate

sentences under s. 342 I. P. Code read with section 149 is not legal. 40 C. L. J. 85, see also S. C. W. N. 483.

This section may be invoked to relieve the offender under s. 323 if that is stated to be the common object of the unlawful assembly under s. 147, and separate sentences under ss. 147 and 323 or 325 read with s. 149 I. P. Code are illegal. 2 Pat. L. T. 91=61 Ind. Cas. 833=22 Cr. L. J. 449, see also 2 Pat. L. T. 316=63 Ind. Cas. 830=22 Cr. L. J. 702, 105 Ind. Cas. 218=A. I. R. 1927 Mad 970=53 M. L. J. 656.

A Court cannot pass consecutive sentences in respect of conviction under ss. 394 and 397 based on the same set of facts. 89 Ind. Cas. 390=25 Cr. L. J. 1350 Preparation for committing dacoity and assembling for doing it are distinct offences. A. I. R. 1925 Lah. 119(2). Separate sentences for the offence of rioting and hurt are legal when it is found that each person took an individual part in the assault. 41 C. L. J. 471=89 Ind. Cas. 241=26 Cr. L. J. 1297=A. I. R. 1925 Cal 1039, 40 C. 511 There is nothing in section 71 that in any way restricts the power of the Court under s. 35 of Cr. Pro. Code of 1923. Therefore separate sentences can be passed under s. 35 as amended for an offence of house breaking at night with intent to commit theft under s. 457 I. P. Code and of theft of ornaments from that house under s. 380 I. P. Code and the sentences of imprisonment can be made to run one after another 88 Ind. Cas. 997=26 Cr. L. J. 1253=41 Cr. L. J. 563.

The force necessary to constitute the offence of rescuing a cattle may fall short of "causing bodily pain" and if further force is used which does cause bodily pain, the offences which are involve and are complete by mere use of criminal force have been exceeded and that excess constitutes another offence, viz, that of causing hurt or causing whatever more serious form of bodily hurt has been the result. In such a case separate sentences for the offences of causing hurt and of rescuing cattle may legally be passed 39 M. L. T. 543=105 Ind. Cas. 806=(1927) M. W. N. 850=53 M. L. J. 653. Where a person was tried on charges under ss. 356 and 376 I. P. Code, for having kidnapped and raped a married girl and convicted under both the sections and separate sentences were passed. Held, that the two offences did not form part of the same transaction, and that separate sentences could validly be passed and s. 71 I. P. Code was no bar to the same A. I. R. 1927 Lah. 88=7 Lah. 484=99 Ind. Cas. 344=28 Cr. L. J. 136, see also 8 Bom. L. R. 120, 75 Ind. Cas. 77 Separate sentences for rioting - grievous hurt is not cau 13 C. W. N. 761, 11 C 1 P. R. 1916; 4 P. R. 190: the grievou hurt is caused individually such sentences are legal 17 B. 260, 19 105, 12 C. 495, 7 A. 29

72. In all cases in which judgment is given that a person

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest

punishment is provided if the same punishment is not provided for all

Object—This provision is intended to prevent an offender whose guilt is fully established from eluding punishment on the ground that the evidence does not enable the tribunals to pronounce with certainty under what penal provision his case falls. Whether the doubt is merely between an aggravated and mitigated form of the same offence or between two offences neither of which is a mitigated form of the other, the offender must be punished for the offence to which the lowest punishment is provided. If the same punishment is provided for each of the

offender of course is liable to that punishment—*Morgan and* justified only on one or other of the of the two occasions falsehood was Rat Un Cr C 336

Cases.—When an accused person is convicted in the alternative, one of the offences of which he might be guilty being murder punishable under s. 302 of Indian Penal Code, s. 72 so far overrides s. 302 as to admit, in such a case, of a less punishment than transportation for life being inflicted. 26 A. W. N. 93—3 Cr. L. J. 369. The causing of death by an act done with the intention of causing death can not alternatively be the offence of murder or the offence of culpable homicide not amounting to murder, neither section 266 Cr. P. Code nor s. 267 Cr. P. Code being applicable to the case.

for offences under the Penal Code to Ind. Cas. 168—12 Cr. L. this section and of ss. 235 and 357 (3) Cr. Pro. Code apply only to cases where the actual facts are established but there is a doubt as to the application of the law to the proved facts. 11 P. R. 1913 Cr. 14 Cr. L. J. 664—21 Ind. Cas. 904—271 P. L. R. 1914, see also 11 P. R. 1887; 7 N. W. P. 137; 21 C. 955

73. Whenever any person is convicted of an offence for

Solitary confinement.

which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender

shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say :—

a time not exceeding one month if the term of imprisonment shall not exceed six months ;

a time not exceeding two months if the term of imprisonment shall exceed six months, and "shall not exceed one year" ;

a time not exceeding three months if the term of imprisonment shall exceed one year.

Amendment.—The words quoted have been substituted by the Indian Penal Code Amendment Act—(VIII of 1882) s. 5

Period of solitary confinement.—The intention of this section is that a term of three months is the maximum period of solitary confinement that can be judicially awarded in a continuous period of imprisonment. U. B. R (1897—1901) Vol. I 247

Solitary confinement cannot be awarded when a person is punished under a local or special law. 76 Ind. Cas 184. A person cannot be kept in solitary confinement for the whole term of his imprisonment. Under this section it is to be imposed at intervals. 3 B. L. R. A. Cr. 49. This section provides that whatever the length of the sentence may be, a solitary imprisonment for a period exceeding 3 months can not be passed (U. B. R 1892—1896) Vol I, 146. Even cumulative sentences of solitary confinement exceeding 3 months are illegal. U. B. R. (1892—1896) Vol I, 146 ; 5 C. P. L. R. 23, 37 P. R. 1905 Cr., 13 P. R. 1877. Solitary confinement in lieu of fine is illegal. 26 P. R. 1878 Cr., 36 A. 495, 20 P. R. 1895, 9 P. R. 1832, 53 P. R. 1837. Solitary imprisonment is legal only if a person is convicted under this Act. 46 A. 114—21 A. L. J. 913—1924 All 319, 24 P. R. 1879, 76 Ind. Cas 184. 120 P. R. 1866, 20 P. R. 1870, (1899) P. J. 551, 14 C. P. L. R. 39, 1927 All 478, 102 Ind. Cas 312. The exact period of solitary imprisonment should be mentioned. 33 P. R. 1869. In a security proceeding under s. 110 Cr. Pro. Code solitary confinement can not be ordered. 53 M. L. J. 656—105 Ind. Cas. 828.

74. In executing a sentence of solitary confinement, such confinement shall, in no case, exceed

Limit of solitary confinement.

fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods ; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days, in any one month, of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Notes.—Solitary imprisonment must not be imposed for term of the imprisonment. 3 B. L. R. A. Cr. 49.

75. Whoever having been convicted,—

(a) by a Court in British India, of an offence punishable, under Chapter XII or Chapter XVII of this Code, with imprisonment of either description for a term of three years or upwards, or,

(b) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor-general in Council, or of any Local Government, of an offence which would, if committed in British India, have been punishable under those Chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term,

shall be subject, for every such subsequent offence, to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

shall be subject, for every such subsequent offence, to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

Amendment—This section has been substituted for the original by Act III of 1910.

Scope—Under this section, an accused renders himself liable to enhanced punishment by reason of previous convictions against him only if such convictions were made before he committed the offence he stands charged with. 9 L. B. R. 77. In the case of men with previous convictions, regard should be had to their career and to the time that had elapsed between the convictions passed upon them. This section was not intended for the purpose of automatically enhancing by a kind of geometrical progression the sentence to be passed after a previous conviction. The reason for passing a more severe sentence in the case of a criminal with a previous conviction is primarily to protect the society from the predations and offences committed by a habitual rogue, who has shown no signs of repentance. A Magistrate or Judge should make an enquiry into the repute and the antecedent behaviour of a man whom he proposes to sentence severely. 19 Cr. L. J. 655. There is no justification for the view that whenever there is a previous conviction within the terms of this section, against an accused person, the Court is bound to pass an enhanced sentence on him, that is to say a sentence wholly disproportionate to the actual offence under investigation. This section does not empower a Court to pass an enhanced sentence merely because there are previous convictions against the accused person although it enables the Court to sentence a person to transportation for life or to imprisonment up to 10 years. This section enables a Court to pass a sentence commensurate

with the nature of the offence on the accused person. It does not empower a Court to pass a sentence ~~different from the nature of the~~ actual offence; recourse should not be had to the provisions of the Act unless the punishment provided for the offence is sufficient. ~~It is not necessary to prove that the accused is charged under the provision that the previous conviction in question has been proved.~~ The proper way to prove it is by a certificate extracted certified under the hand of the officer in whose custody are the records of the Court which convicted, or (2) by a certificate under the hand of the officer in charge of the Jail in which the punishment or any part thereof was undergone, or else by production of the actual warrant of commitment under which the punishment was suffered. In every case there must be evidence as to the identity of the accused person with the person so convicted. A. I. R. 1928 Lah 107. A Magistrate can take into consideration the previous conviction at the time of awarding sentence independently of s. 75. A. I. R. 1928 (F. B.) R. 200. Under this section the Sessions Judge had no power to order transportation for ten years. A. W. N. 1883, 225. This section has no application where the accused attempts to commit his first offence for the second time, 14 C. P. L. R. 72. see also 14 P. R. 1906 Cr. 1613 on L. R. 26, 23 A. B. J. 926. In a second conviction, a magistrate cannot lawfully pass a sentence of more than double the amount of punishment, which might be passed on a prisoner for a first conviction of theft. S. C. 79 Oudh. This section does not apply to cases which are confined to s. 511. 17 A. 123=15 A. W. N. 23, 6 A. W. N. 255. see also 17 A. 120, 14 P. R. 1906=5 Cr. L. J. 85, 27 A. W. N. 178=6 Cr. L. J. 7, 69 Ind. Cas. 142=22 Cr. L. J. 750. A sentence combining imprisonment and whipping can not be passed on a summary trial, but only when there is a previous conviction. 12 C. P. L. R. Cr. 7. This section has no application where the subsequent conviction is for technical theft. 3 P. W. R. 1914 Cr.=4 P. L. R. 1914=15 Cr. L. J. 183=22 Ind. Cas. 759. This section has no application in the case of a person who is guilty of an offence under s. 403 and who was previously convicted under Chapter XVII of the Code. 11 Ind. Cas. 623=36 P. W. R. 1911 Cr.=72 Cr. L. J. 439. This section has no application in convictions under s. 417, in as much as an offence under section 417 is not punishable with 3 years' imprisonment or upwards. 19 P. L. R. 1889 Cr. A second class Magistrate cannot pass an enhanced sentence under this section. Rat. Un. Cr. C. 688. Where enhanced sentences are contemplated under this section, a separate head of charges must be distinctly drawn. 139 P. L. R. 1911=10 Ind. Cas. 241=12 Cr. L. J. 233=40 P. W. R. 1911 Cr. But the charge need specify the extent of the former punishment. 4 M. H. C. App. 11. This section is inapplicable where the latter offence is not punishable under Chapter XVII of the Code or with imprisonment for 3 years. A. W. N. 1882, 178, see also 2 Pat. L. R. 205. Where a person has been previously convicted of theft in a state, which has adopted the Penal Code, this section does not

2 P. R. 1884 Cr. ; 17 P. R. 1913 Cr. , 18 A. L. J. 58. A previous order under s. 118 of the Code of Criminal Procedure can not be taken into account in inflicting an enhanced sentence on a person under this section. L. B. R. (1872-1892) 490. Enhanced sentence under this section can be passed against an habitual offender L. B. R. (1872-1892) 291, see also L. B. R. (1872-1892) 449. This section contains no power to fine for an offence punishable under Chapter XII or Chapter XVII, when such offence is committed after a previous conviction of an offence punishable under one of those Chapters. 1 L. B. R. 57.

The summary procedure laid down in Chapter XVII, Code of Criminal Procedure, 1882, is not adapted to the trial of offences to which this section applies. L. B. R. (1872-1892) 386. A sentence of 'seven years' transportation on a fifth conviction for theft is not excessive 4 U.B.R. (1892-1895) Vol. 1, 147. The evidence of previous conviction must be clear and precise 14 W. R. Cr. 7; see also 26 P. L. R. 843. It is not the intention of the legislature that a previous conviction should enormously enhance the heinousness of petty offences. 1 C. L. R. 481.

For the application of this section, the previous conviction must be under the Code 10 C. L. R. 392. The object of this section is to pass an additional sentence on the accused not a less severe sentence 9 C. 877. This section does not authorise a Magistrate to pass a sentence beyond his jurisdiction. 6 M. H. C. R. App. 2.

Where a long time has elapsed in the case of an accused from his last conviction, this section should not be applied. 99 Ind. Cas. 416 = 28 Cr. L. J. 160 = A. I. R. 1927 Lah. 647; see also 95 Ind. Cas. 403 = 27 Cr. L. J. 944. Previous conviction of theft and burglary should not be taken into account in increasing the sentence for an offence under s. 419. 100 Ind. Cas. 535 = 28 Cr. L. J. 312. This section has no application where the offence for which the sentence is passed is committed after the date of the first offence but before conviction for the same. 23 Bom. L. R. 484 = 27 Cr. L. J. 726 = 95 Ind. Cas. 726 = A. I. R. 1926 Bom. 305 see also 9 L. B. R. 77. This section applies even where there is only one previous conviction. 93 Ind. Cas. 365 = 8 L. L. J. 146 = 27 Cr. L. J. 621 = 27 P. L. R. 267. Conviction of offence under s. 369 is insufficient for enhancement. 75 Ind. Cas. 358 = 24 Cr. L. J. 944.

In case of men with previous convictions regard should be had to their career and to the time that had elapsed between the convictions passed upon them. 45 Ind. Cas. 847 = 19 Cr. L. J. 555.

CHAPTER IV.

GENERAL EXCEPTIONS.

General exceptions—Where an accused person has raised pleas inconsistent with the defence which would bring his case within one of the general exceptions in the Indian Penal Code, he cannot, in appeal, set up a case upon the existence of such circumstances as would bring his case within one of the general exceptions.

accused person with

Code can and may

or to be found elsewhere in the record. In the absence of such evidence, the Court is not competent to assume the existence of those circumstances, more particularly when the pleas taken are inconsistent with the assumption that such circumstances might have existed, or that doubt may arise in consequence of such assumption and the accused ought to be given the benefit of the doubt. 7 A. L. J. 439—32 A. 451—11 Cr. L. J. 374—6 Ind. Cas. 509. Where a defamatory statement was made by a person as a witness in a case, but the person was not bound by law to go into the witness box and make it, this section did not apply. 18 A. H. J. 846.

Prince's case on mistake of facts—The following rules were laid down in Prince's case (*R v Prince*, L. R., 2 C C 154).—

(1) That when act is in itself plainly criminal, and is more severally punishable if certain circumstances, co-exist,—ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence.

(2) That where an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge.

(3) That even in the last named cases, the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstances which alters the character of the act, or to a belief in its non-existence.

(4) Where an act which is in itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime—*Vide Mayne's Criminal Law*, ss. 133—134.

Act done by a person bound, or by mistake of fact believing himself bound, by law

76. Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it.

Illustrations.

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

... .. to which the Kochin Code is to be read as

Code, or in any other enactment for the time being in force, a person convicted of any offence punishable under this Code or under any other enactments shall be punishable with fine in lieu of, or in addition to, any other punishment to which he may be liable.

Scoopo.—"Ss. 76 and 79 relate to the case of persons who are and who justifiably believe that they are acting in conformity with law. Where their acts are, on their face, legal of course no further question can arise. But cases of considerable difficulty occur where persons act under superior, or even the highest authority, when the orders given to them are not in accordance with the usual working of the law. Such orders may be absolutely illegal, or they may be legalized by an emergency which sets aside the ordinary procedure applicable to similar cases, or they may be done by virtue of a power which stands above the law, and is exempt from its jurisdiction"—*Mayne's Criminal Law*. A police officer, is liable to punishment for carrying out the illegal act under the orders of his superior officer. L. B. R. (1872—1892), 164. The rule as regards mistake of fact is thus stated by *Stephen J* in *Reg v. Tolson*, 23 Q. B. D. at p. 188. "I think it may be laid down as a general rule, that an alleged offender is deemed to have acted under that state of facts which he in good faith, and on reasonable grounds, believed to exist when he did that act alleged to be an offence." 26 Bom. L. R. 138.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act of Judge when acting judicially,

Object.—"One who serves in a judicial capacity is required to exercise a judgment of his own and all questions of law and fact which is not punishable for error or mistake large exemption is conferred on him when acting judicially, not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives to him but also in cases where he, in good faith exceeds his jurisdiction and has no lawful powers."—*Morgan and Mac-*

person. In *Kemp v. Neville*, 10 C. B. N. S. p. 547 *Earle C. J.* observed : "The rule that a judicial officer can not be sued for an adjudication, according to the best of his judgment, upon a matter within his jurisdiction, has been uniformly maintained." As regards their criminal liability *Cockburn C. J.* thus observed in *Reg. v. Nelson*, *Cockburn* pp. 124 155 "When there is jurisdiction, but the jurisdiction is exercised under a misapprehension, either with reference to a person not within it, or in excess of the power of the tribunal in such cases the persons acting with judicial authority would not be criminally responsible." See also 2 M. L. A. 293, 4 M. L. A. 353

78. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Scope—The protection given under this section to ministerial officers acting under the authority of a Court of Justice is in terms rather less than that which is given to them against civil suits by Act VII of 1850, and rather more than is given to the public generally by s. 79 *Mayne's Criminal Law*. Under this section where the Court had no jurisdiction to issue an order, it is necessary further to show that the officer acting upon the order in good faith believed that the Court had jurisdiction. On the other hand, this section goes beyond s. 79 since under the former section a mistake in law may be pleaded as justification, while under the latter section the mistake must be one of fact. Practically the burden of proof thrown upon the ministerial officer will vary very much according to his position, and to the amount of care and knowledge which he is expected to exercise in that position. Every such officer will be held harmless, if he acts on a warrant which is valid on its face, and which is issued by a person who had jurisdiction to issue it. It is neither his right nor his duty to go behind the warrant. *Herdson v. Preston*, 21 Q. B. D. 362 cited in *Mayne's Criminal Law* § 150. This section does not extend to the oral order of a Judge. 4 L. B. R. 253—8 Cr. L. J. 68. Where a person exceeds the power given to him by the warrant he is liable. 7 B. H. C. R. 83, 12 W. R. 329, 8 B. H. C. R. (A.C.), 177.

79. Nothing is an offence which is done by any person who is justified by law, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified by law.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(a) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down C, which he intended the risk of running

(b) A, in a great fire, pulls down houses in order to prevent the conflagration in good faith, and that the harm to be prevented is as to excuse A's act,

Principle—This section is intended to give legislative sanction to the principle that, where, on a sudden and extreme emergency, one or other of two evils is inevitable, it is lawful so to direct events that the smaller only shall occur.—*Mayne's Criminal Law.*

Scope—This section applies only to acts done without any criminal intention to cause harm. 5 B. H. C. R. Cr. 59. An act done for the purpose of preventing or avoiding other harm to person or property is not an offence. 626 Inoculation Act prohibits. Being really L. B. R. [1893—] at it is open to a private citizen to arrest any person who is reasonably apprehended to commit a breach of the peace is not applicable to India. 40 M. 605=44 M. L. J. 655=17 L. W. 592=73 Ind. Cav. 343=24 Cr. L. J. 599=1923 Mad. 523 (F B) overruling. 44 M. 913.

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Notes.—The presumption of English Law, against the possibility of the offence of rape by a boy under 14, does not apply to India and the question is one of fact only. 13 A.L.J. 254=37 A. 197=16 Cr L.J. 372=28 Ind Cas. 658. Where the accused is under seven years of age, he cannot be prosecuted. 22 W. R. 27. But receiving stolen property from such a child is an offence. 1 Weir 470.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Scope.—In construing this section, the capacity of doing what is wrong is not so much to be measured by years, as by the strength of the offender's understanding and judgment; such a degree of malice may be disclosed by the circumstances of a case as to justify the application of the maxim *malitia supplet aetatem* 1 W. R. Cr. 43.

Consequences of his conduct.—"The consequences of his conduct" referred to in this section, are not the penal consequences to the offender, but the natural consequences which flow from voluntary act. 22 W. R. Cr 27. Where an accused person is under twelve years, the Magistrate should, under this section, find that the accused has attained sufficient maturity of understanding to judge of the nature and consequences of his act. 27 C 133. Under this section a child between seven and twelve years of age cannot be held guilty of an offence with respect to any act unless it is shown that the child had attained sufficient maturity of understanding to judge of the nature and consequences of that act. 5 M. L. T. 296. A child under 10 years of age was acquitted when charged with an offence of bigamy. Rat. Un Cr C 876=Cr Rg. 55 of 1896. The presumption of English Law, against the possibility of the offence of rape by a boy under 14, does not apply to India and the question is one of fact only. 13 A. L. J. 254=37 A. 187=16 Cr L. J. 322=28 Ind Cas 658. The conviction of a person charged with receiving stolen property is not bad on the ground that the child who sold the property was under twelve years of age. 6 M. 373=7 Ind Jur. 304. A boy of 12 can be convicted for an attempt to commit rape. 11 Bur. L. T. 135.

If a child commits an offence when he is unable to understand the nature of the offence it can hardly be supposed that he will be able to understand that he must plead his own lack of understanding when placed upon his trial. He cannot be debarred from the defence allowed him by this section merely because of his ignorance of Court Procedure. 10 O & A. L. R. 788.

84. Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

That the unsoundness of mind, must be such as to render the person incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, for the defence to be available. See also 26 M. L. T. 361, 1919 M. W. N. 790; 3 W. R. 9. The nature and extent of the unsoundness of mind must be such as to render the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. P. L. R. 1909, Rat. Un. Cr. 1914, 3 Cr. 28. A person who, though of unsound mind, knows that in killing another, he is committing a wrongful act, is not entitled to the benefit of this section. 3 A. L. J. 463. The provisions of this section which are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords in *Mac-Naghten's Case*, show that it is only unsoundness of mind which materially impairs the cogitative faculty of the mind that can form a ground of exception from criminal responsibility, the nature and extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. A person subject to insane impulses is not entitled to exemption from criminal liability if his cogitative faculties are left unimpaired. 23 C. 604; see also 23 C. W. N. 621=29 C. L. J. 209; 32 Ind. Cas. 671; 48 I. C. 942. The nature and the extent of the unsoundness of mind must be such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. The test of insanity as viewed from a legal point, does not coincide with the medical idea, and in many cases a man, who is, in the opinion of the medical experts of unsound mind, cannot claim the benefit of this section. 94 P. L. R. 1909=6 M. L. T. 101=4 Ind. Cas. 985=11 Cr. L. J. 105. See also 10 B. 512; 2 U. B. R. 28. If a person is of unsound mind, he is

B. R. 13=20 Ind. Cas. 411=14 Cr. L. J. 427. Partial delusions or mere existence of mental disease does not necessarily exempt a person from criminal responsibility. Rat. Un. Cr. C. 229; 28 C. 613=5 C. W. N. 665, 43 Ind. Cas. 423=3 Pat. L. J. 291; 109 P. R. 1866 Cr. If a

lunatic has lucid intervals, the law presumes the offence of such person to have been committed in a lucid interval Rat Un Cr C. 172. A person whose intellect is weak and whose father was insane is not necessarily a person of unsound mind Rat. Un. Cr. C 10 The test to determine whether a person who has committed an offence was of sound mind, is whether he knew that he was doing wrong 24 W. R Cr. 5; see also 8 P R 1869 Cr. ; 29 C 493=6 C W. N 506; 7 W. R. 42; 25 Cr L J. 576. This section exempts a man from criminal liability for his act, only when he is prevented, by reason of mental disease, from controlling his own conduct, or from passing a rational judgment on the moral character of the act he meant to do. 42 P R. 1187 Cr, see also 26 M L T 361 An accused who is suffering from a type of insanity known as *folie circulaire* cannot be exempted. 46 A 243=22 A. L. J, 116=81 Ind Cas 171=25 Cr L J 683 In order to come under this section it must be shown that the accused was incapable of knowing the nature of the act or of knowing that he was doing what was either wrong or contrary to law 74 Ind Cas 69=24 Cr L J 741, 102 Ind Cas 774=28 Cr L J 598, A I. R 1925 Mad. 1238=49 M. L. J 598, 13 Cr. L J 49

The onus lies on an accused person to show that he is exempted from criminal responsibility by reason of such unsoundness of mind as made him incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. 55 Ind Cas 477=21 Cr. L J 317, see also 23 C, W N 621=29 C L J, 209=50 Ind. Cas. 991=20 Cr L J 383, 21 A L J. 776=L. R 4 A 234, A W N 1901, 132, 56 P R 1866 Cr, Rat. Un Cr C 818, 17 C. P. L R 113, 20 Ind. Cas 411.

Cr Pro. Code ss 404 & 405—When an issue as to unsoundness of mind of an accused person is raised the Court is bound to enquire before it begins to record evidence. 42A 137=18 A.L.J 153=54 Ind Cas 483=21 Cr L J 83 A. W N 1905, 2=2 Cr L J. 91, A W. N 1882, 106, 3 W. R. Cr 57, 3 W R. Cr 70, 1 W. R Cr. 11, 1 W R Cr 15, 9 W. R. Cr. 23, 10 W. R Cr 37. 1 B H. C. 33 Cr

Cases—The accused who was a habitual *ganja* smoker murdered a boy who was an absolute stranger to him and for which there was no motive. The plea of unsoundness of mind under s. 84 was not taken. *Held* under the circumstances the case fell under s 86. 27 C. W N. 290=1923 Cal. 460. Even if it be proved that an accused charged of murder was conceited, odd and irascible, and his brain was not quite all right, it cannot be said that he was incapable of knowing that murder was wrong so as to exempt him from criminal liability under this section. 103 Ind. Cas 59=28 Cr L J 635=A. I R. 1927 Lah 567 A man may be suffering from some form of insanity in the sense in which the words would be used by an alienist, but may not be suffering from the unsoundness of mind as defined in this section 8 Lah. 114=8 L. L. J 566=99 Ind Cas. 328=28 Cr L J 120=27 P. L. R 823=A. I. R. 192

Lah. 52 Where there was no positive evidence that the accused was suffering from delirium at the time he committed the murder, or that he was unconscious of the nature of the act he had committed he cannot take shelter under this section. 12 M. 459—1 Weir 42. Where an accused, notwithstanding some mental derangement, is held accountable under the criminal law for his actions, because he was capable of knowing the nature of his acts and that what he was doing was wrong and contrary to law, a Court, in determining the legal punishment may properly take into judicial consideration the impaired capacity of control over the emotions and will which forms part of the mental derangement in which other faculties are involved L. B. R. (1893-1900) 249 Where the facts on the record proved that the unsoundness of mind prevented the accused, from knowing the nature of the act and its wrongfulness, he is entitled to be acquitted under this section 34 C. 686—6 Cr L J 233 If a man suffers from a partial delusion only and is sane in other respects, he must be dealt with as if the facts with respect to which the delusion existed were real 15 O. C. 321—18 Ind Cas 641—14 Cr L J. 81; see also U. B. R 1914, 3rd Qr. 28—26 Ind Cas 1007—16 Cr. L. J. 95. A person who though of unsound mind, knows that, in killing another, he is committing a wrongful act, is not entitled to the benefit of this section A. W. N 1906, 193—3 A. L. J. 463—4 Cr L J 88 Test of insanity is to ask, in the circumstances, whether the man would have committed the act, if a police man would have been at his elbow 1928 Cal 239

85. Nothing is an offence which is done by a person who, at the time of doing it, is by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will

Soope.—Where the acts proved are themselves sufficient to establish

as a ground of exemption, is treated in just the same way as insanity under section 84. Therefore it would be no ground of excuse for crime to plead merely that the accused was involuntarily drunk. It must be shown that he was so drunk and that he did not know (1) the nature of the act or (2) that it was wrong or (3) that it was contrary to law. But though neither voluntary drunkenness nor involuntary drunkenness which does not involve one or other of the three states of mind mentioned in

this section, are excuse for crimes committed under their influence, yet the fact of drunkenness may alter the nature of the legal offence committed though it is no excuse for the act. This occurs when the essential of the crime is the presence of some particular knowledge or intention. Intention is sometimes a presumption of law, sometimes it is a mere fact to be proved like any other fact.—7 N L R 180=13 Ind Cas 919.

Notes—Where an act done is not an offence unless done with a particular intention, it is permissible to consider voluntary drunkenness in determining whether the accused had that intention. 11 Cr. L. J. 659

86 In cases where an act done is not an offence unless done with a particular knowledge, or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him, was administered to him without his knowledge, or against his will.

Scope—In most cases, intention has to be inferred from the nature of the acts done and from all the circumstances of the case. If a drunkard, by reason of his drunkenness, does not know the nature of his act, he cannot be presumed to have intended the consequences of that act. Therefore in cases where an act is not an offence at all unless it is done intentionally, drunkenness is an excuse. A drunkard is often fully conscious of what he is doing and what are the natural consequences of his acts. If he fails to prove the same knowledge in relation to then s 86 will not apply at all just as it would be in the case of

drunkenness makes no difference to the knowledge with which a man is credited. If the accused knew that the natural consequences of his act were, he must be presumed to have intended to cause them. *Per Aylmer*, in 38 M 479=30 Ind Cas 451=16 Cr. L. J. 627. It is true that s 86 lays down that in certain cases an intoxicated person shall be liable to be dealt with "as if he had the same knowledge as he would have had if he had not been intoxicated." But it does not provide that the intoxicated person shall be dealt with as if he had the same intent. 38 M. 479=30 Ind Cas. 451=16 Cr. L. J. 627, per *Tyabji J*. This section gives

the drunken man that knowledge of the sober man when judging of his action; but does not give him that intention, it does not render him liable to be dealt with as if he had the same intent 6 L. B. R. 100=5 Bur. L. T. 193=17 Ind Cas. 800=13 Cr. L. J. 864 (F. B.): see also U. B. R. 1910, 2nd Qr. 77.

87. Nothing which is not intended to cause death or grievous

Act not intended and not known to be likely, to cause death or grievous hurt, done by consent. hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer

to cause, to any person, above eighteen years of age, who has given consent, whether express, or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play, and if A, while playing fairly, hurts Z, A commits no offence.

Object—"Generally speaking, every man is free to inflict any suffering or damage he chooses on his own person and property, and if instead of doing this himself, he consents to its being done by another, the doer commits no offence. A man may give away his property, and so another who takes it by his permission does not commit theft. He may inflict self-torture or he may consent to suffer torture at the hands of another. But the law, as declared by this exception does not permit him to give his consent to any thing intended, or known to be likely, to cause his own death or grievous hurt"—*Morgan and Macpherson*. When death is caused under misconception of fact, but where no intention or knowledge of the accused was proved, the case was governed by ss. 87 and 90. 16 Cr. L. J. 581=30 Ind Cas. 133; see also U. B. R. (1897—1901) Vol. I, 198.

88. Nothing, which is not intended to cause death, is an

Act not intended to cause death done by consent in good faith for person's benefit

offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who

has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

Scope—No consent can justify an intentional causing of death. But a person for whose benefit a thing is done, may consent that another shall do that thing even if death may probably ensue. It is often the wisest thing that a man can do to expose his life to great hazard. It is often the greatest service that can be rendered to him to do what may probably cause his death. He may labour under a cruel and wasting malady which is certain to shorten his life, and which renders his life, while it lasts, useless to others and a torment to himself. Suppose that under these circumstances he gives his free and intelligent consent

should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call they would commit no offence though by firing they might cause death, and though when they fired they knew themselves to be likely to cause his death.—*Morgan and Macpherson* p 66

Benefit—Pecuniary benefit is not the benefit within the meaning of this section (vide s 92 expl). Hence dangerous exhibitions are not protected by it. Nor are mutilations permissible which are consented to for some indirect motive, such as making the sufferer an object of charity or prevent enlistment as a soldier, or for the purpose of procuring a discharge.—*Mayne's Criminal Law*, 432

Cases—Where a person has several intercourse with a girl of a little over twelve years of age, with her consent and thereby causes grievous hurt to her, he commits an offence under s 325 I. P. C. and not protected by s 80 or s 88 12 C. P. L. R. 4. A *Kabiraj* who had no training in surgery cannot be exempted under this section, for causing the death of a patient by surgical operation. 14 C 566; see also s W. R. Cr 7. But where the operation is done in accordance with recognized Indian method, he is protected under this section. 28 A. W. N. 91—5 A. L. J. Cr. 155.

89 Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any

Act done in good faith
for benefit of child or
insane person, by or by
consent of guardian.

the drunken man was how edge of the water man when judging of his action, but does not give him the intention it does not render him liable to be dealt with as if he had the same intent. (L. B. R. 1800—53; L. J. 17—57; Ind. Cas. 30—17; Q. L. J. 104 (F. B.)—see also U. S. R. 1811, vol. Q. 77)

87. Nothing which is not intended to cause death or grievous

As not intended and not known to be likely to cause death or grievous harm, does it constitute an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, whose express or implied consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

harm, and which is not known by the doer to be likely to cause death or grievous harm, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, whose express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Definition.

8 and 4 agree to have war with each other for amusement. The agreement is given the owners of each to suffer any harm which, in the course of such fighting may be caused without foul play and I A. while playing fairly, and B. A. while in possession.

Object.—Generally speaking every man is free to inflict any suffering or damage on another or on his person and property and if wronged or damaged he must be prepared to do or be done by another, the doer cannot be an offence. A man may give away his property, and so another who takes it by his permission does not commit theft. He may refuse self-defence or he may consent to suffer torture at the hands of another. But the law, as declared by that exception does not permit him to give his consent to any thing intended or known to be likely, to cause his own death or grievous harm—*Hippert and Magistrate*. When death is caused under misapprehension of fact, but where no intention or knowledge of the accused was proved, the case was governed by *id. 17* and *Q. L. J. 51—50* Ind. Cas. 133; see also U. S. R. (1897—1901) Vol. 1, 173.

88. Nothing, which is not intended to cause death, is an

As not intended to cause death, does it constitute an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

As not intended to cause death, does it constitute an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

Scope—No consent can justify an intentional causing of death. But a person for whose benefit a thing is done, may consent that another shall do that thing even if death may probably ensue. It is often the wisest thing that a man can do to expose his life to great hazard. It is often the greatest service that can be rendered to him to do what may probably cause his death. He may labour under a cruel and wasting malady which is certain to shorten his life and which renders his life, while it lasts, useless to others and a torment to himself. Suppose that under these circumstances he gives his free and intelligent consent to take the risk of an operation which in a large proportion of cases has proved fatal but which is the only method by which his disease can possibly be cured, and which if it succeeds, will restore him to health and vigour, the person, who with due care and skill, performs the operation, commits no offence. Again, if a person attacked by a wild beast should call out to his friends to fire though with imminent hazard to himself, and they were to obey the call they would commit no offence though by firing they might cause death, and though when they fired they knew themselves to be likely to cause his death.—*Morgan and Macpherson* p 66

Benefit—Pecuniary benefit is not the benefit within the meaning of this section (vide s 92 expl). Hence dangerous exhibitions are not protected by it. Nor are mutilations permissible which are consented to for some indirect motive, such as making the sufferer an object of charity or prevent enlistment as a soldier, or for the purpose of procuring a discharge.—*Mayer's Criminal Law*, 432

Cases—Where a person has several intercourse with a girl of a little over twelve years of age, with her consent and thereby causes grievous hurt to her, he commits an offence under s 325 I P C and not protected by s 80 or s 88 12 C P L R 4. A *Kabiraj* who had no training in surgery cannot be exempted under this section, for causing the death of a patient by surgical operation 14 C 566, see also 5 W R Cr. 7. But where the operation is done in accordance with recognized Indian method, he is protected under this section 28 A. W. N. 91—5 A L J Cr. 155

89 Nothing, which is done in good faith for the benefit of a person under twelve years of age or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of a

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person :

PROVIDES.

Provided—

First—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death :

Secondly.—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ;

Fourthly—That this exception shall not extend to the abetment of any offence to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Scope—This section provides that the consent of the guardian shall to a great extent, have the effect which the consent of the sufferer himself would have, if the sufferer were of ripe age and sound mind. But because there is considerable danger in allowing people to assume the office of judging for others in such cases, some restrictions are imposed on the guardian's power.

... faith and benefit to the sufferer. ...
 ... faith his own benefit and has a ...
 ... or pain or loss, creates a ...
 ... the whole to suffer that ...
 ... not to be confided to ...
 ... be confide to him his own ...
 even when he sincerely intends to benefit his neighbours. For these reasons where the consent required is that of some one other than the individual himself, something more than mere good faith and the benefit of that sufferer are by this section made necessary. *Morgan and Macpherson* p. 67.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or,

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Scope—This section is rather a General Explanation than a General Exception. A free and intelligent consent must be given. Fear of injury or mistake of fact are not consistent with such a consent. Suppose an ignorant person to represent himself as having skill to perform a difficult operation and by this pretence to obtain consent to perform it, such consent can avail him nothing. But where the facts which invalidate a consent are unknown to the person to whom it is given as when other persons without his knowledge represent that he possesses medical skill and thus obtain consent to his administering a patent medicine etc., this will not make the consent invalid—*Morgan and Macpherson*, p. 68. The expression "under a misconception of fact" is broad enough to include all cases when the consent is obtained by misrepresentation, the misrepresentation should be regarded as leading to a misconception of the fact with reference to which consent was given. A misrepresentation as to the intention of a person is a misrepresentation of a fact. 36 M 453—22 Ind Cas 168—15 Cr L J 24; see also 18 C (F. B.), 14 C. 566, 5 W. R. 7; 12 W R 7, 17 P. R. 1919 but see 8 L. B. R. 166.

91 The exceptions in sections 87, and 88, and 89, do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Exclusion of acts which are offences independently of harm caused

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any

harm which it may cause, or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm," and the consent of the woman or of her guardian to the causing of such mis-carriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may

Act done in good faith for cause to a person for whose benefit, it is
benefit of a person without done in good faith, even without that per-
consent

benefit ;

Provido,

Provided—

First—That this exception shall not extend to the intentional causing of death, or the attempting to cause death ;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt ;

Fourthly—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(a) Z is thrown from his horse, and is insensible, A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

Scope—In these examples there is what may be called a temporary guardianship justified by the exigency of the case and by the humanity of the motive. This section extends to acts done in the exercise of this temporary guardianship a protection very similar to that given by section 89 to the acts of regular guardians—*Morgan and Macpherson* p. 70.

Pecuniary benefit—The benefit alluded to in this section must be some physical benefit i.e., the alleviation of some disease or diseased or disorganized condition of some part or member of the body. 5 W. R. 7.

93 No communication made in good faith is an offence by

Communication made in good faith.	reason of any harm to the person to whom it is made, if it is made for the benefit of that person.
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Illustration.

A, a surgeon in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence though he knew it to be likely that the communication might cause the patient's death.

94. Except murder and offences against the State, punishable

Act in which a person is compelled by threats.	with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.
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Explanation 1—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing character, is not entitled to the benefit of this exception ground of his having been compelled by his associates to do a thing that is an offence by law.

Explanation 2—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law—for example, a smith compelled to take his tools, and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Scope.—This section is the only law which allows the doer of a crime to plead necessity as a defence. In order that the doctrine may be applicable, there must be a reasonable fear at the very time, of instant death. The Indian law about compulsion and necessity as a justification of an act otherwise criminal, is based on the law of England. The law does not, where there is no fear of instant death, require the Courts to discuss the philosophy of free will, or determine whether the person who bribes to secure some advantage to himself is a victim of extortion or feels helpless or not. 13 B 115. But in order to get protection under this section the fear must be of instant death. 10 W R 48, 20 B 215; 20 B 324, 1912 M. W. N. 1108.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Scope—This section is only intended to provide for those cases which fall within the letter but not within the spirit of the law 12 M 193.

This section will have no application unless the act in question amounted to an offence under the Code. *Emperor v. Prem Nath Chowdhury*, 29 C. 489; 1 N. L. R. 189. A theft of pods of no value falls under this section. 5 B 11 C Cr. 35. This section is not applicable to a case where the accused is charged with the offence of theft of three pies worth of dung cakes. *Rat Un Cr C.* 400. An offence of causing slight harm is covered by this section. A. W. N. 1881, 100, A. W. N. 1882, 229; 8 C. P. L. R. Cr. 15; A. W. N. 1887, 73; 27 A. 28—A. W. N. 1904, 153; 13 Cr. L. J. 1912 Cr.; 15 Cr. L. J. 14. A trumpety quarrel is covered by this section. 12 Cr. L. J. 103—9 Ind. Cas. 586. The term *Kula bhrashita* i. e. prostitute's son used in a book is *prima facie* defamatory and does not fall under s. 95. 11911) 2 M. W. N. 8—10 M. L. T. 96—12 Cr. L. J. 497—12 Ind. Cas. 217. But when the imputation is very slight this section applies. 97 Ind. Cas. 347—23 Cr. L. J. 139—1927 Rang. 43. Imputation to a Hindu that he is an out-caste is defamatory and is not covered by this section. 1928 All. 213.

Of the Right of Private Defence.

96 Nothing is an offence which is done in the exercise of the right of private defence.

Things done in private defence.

Principle—“The whole law of self-defence rests upon these propositions—(1) that the society undertakes, and, in the great majority of cases, is able to protect private persons against unlawful attacks upon their persons or properties, (2) that where its aid can be obtained, it must be resorted to, (3) that where its aid cannot be obtained, the individual may do everything that is necessary to protect himself; but (4) that the violence used must be in proportion to the injury to be avoided and must not be employed for the gratification of vindictive or malicious feeling—*Mayne's Criminal Law*. This right arises to every man on a reasonable apprehension of danger to himself or others, when the protection of the law and its officers cannot be obtained. It exists for the defence not only of his own person and property, but also of the persons and properties of others, and it extends to causing death in some cases and harm in others. As the right is founded not upon any idea of retributive justice but of preventive, it cannot extend to the inflicting of more harm than is necessary for the purpose of defence—*Morgan and Macpherson*, 73. For the application of the law regulating the right of self-defence, greater pains should be exercised to record the incidents and stages of the fight so far as they are material. L. R. 1893—1900, 262. When a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage with men, who, on the other hand, are equally determined to vindicate by unlawful force their rights, or supposed rights, no question of self-defence arises. 24 A 143—A. W. N. 1901, 193; 89 Ind Cas 155 see also, 20 A. 459. There is no right of private defence where persons believing they will be attacked, court such attack. W. R. 1864 Cr 11. The onus of proving the right is upon the person who wants to plead it (1912) M. W. N. 404; see also 31 C. W. N. 314—35 C. L. J. 131—28 Cr. L. J. 334; A. I. R. 1926 Pat. 433—8 Pat. L. T. 319; 1 C. L. R. 62; 11 C. L. R. 232. No right of private defence arises against any act which is not an offence under this Act 16 C. 206. This defence cannot be taken for the first time in

... 400, U. L. J. 625. A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. 2 B L R A Cr 16—10 W R C. 15 Cr 17 W. R. C. land force A. W. who try in

Right of private defence
of the body and of
property.

97. Every person has a right, subject to the restrictions contained in section, 99, to defend—

First—His own body, and the body of any other person, against any offence affecting the human body ;

Secondly.—The property, whether moveable or immoveable of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

Offences—Offences against the person, and such offences against property as are, or probably may be, accompanied by force as distinct from mere fraud, are meant—*Morgan and Macpherson*, 74.

Secondly—The right of private defence of property can only exist in favour of the person who possesses a clear title to that property and where no such title has been determined, no right of private defence of property can exist 17 Cr. L. J. 180

Extent of right—There is no obligation upon a person entitled to exercise his right of private defence to retire merely because the assailant threatens him with violence. As regards the extent of the right, a man

that is, it should be exercised only in defence of one's own body or that of another person against an offence affecting the body. 4 B. L. R. Ap. 101=13 W. R. Cr. 55. Where the accused found some others taking away moveable property in which they were interested, *held* that they had a right to retain the same by force. A. W. N. 1896, 170. The law must not be invoked to oppress persons, who, when there is no time to have recourse to the public authorities, find themselves in a position in which they must either exert the privilege of private defence as provided and restricted by the law or submit to a forcible invasion of a right of person or property in cases, where under s. 97, the law does not require any such submission. L. B. R. (1893-1900), 219. The law allows every person to use reasonable force to defend his possession from a trespasser. But when the property has been taken possession of by another, however wrongful it might be, the person dispossessed would not be entitled to take the law into his own hands and forcibly recover possession. 6 S. L. R. 121=17 Ind. Cas. 78=13 Cr. L. J. 766; see also 7 W. R. 76; 16 W. R. 64, 14 W. R. 16. 24 C. 686. A person who sees a woman being assaulted in the manner described in ss. 97 and 101 of the Penal Code, is justified in going to her assistance and even in cutting another person with a *da* if

upon
 rance
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15 Cr. L. J. 352=23 Ind. Cas. 704

99 There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Acts against which there is
 no right of private defence.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Extent to which the right
 may be exercised

Explanation 1.—A person is not deprived of the right of private defence against an act done or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

Principle—Ministerial officers of justice and other public servants

that the protection is intended to be given only to a public servant acting

honestly in discharge of powers conferred or of duties imposed on him. The right of private defence does not arise when recourse may be had to the public authorities for this right does not take the place of the functions of those public servants who are especially charged with the duties, and the right

cases in which the pub of his office 18 A. 246. the police officers were acting under a warrant the issue of which was altogether illegal, 24 C. 320; see also 20 Ind. Cas. 992, 3 C. W. N. 627; 13 B. 168. Where is an act of a public servant no person has a right of 1 Weir 135; see also 57 P. 4 C. W. N. 548, 21 M. 79; 9 C. W. N. 125; 29 C. 417, 14 C. L. J. 141=18 Ind. Cas. 894=15 P. L. R. 1913=16 P. R. 1913 Cr.=20 P. W. R. 1913 Cr.; 18 C. W. N. 548=15 Cr. L. J. 427=24 Ind. Cas. 163

persons accused before it a e of the right of private de- themselves did not set up. when the evidence shows that the accused was acting in private defence he may be acquitted 15 Ind. Cas. 310=13 Cr. L. J. 470=11 M. L. T. 251.

Where the right of private defence of property exists it is difficult to distinguish between the right of private defence of property and the right of private defence of the person where the prosecution party comes upon the land in possession of the accused not only to deprive them of their property but also to violently attack them if they tried to defend their possession by force. 15 Cr. L. J. 447=86 Ind. Cas. 218. When a man strikes another it is not easy for the man who is struck to calculate with accuracy the exact force which he can use in defence. Even if he uses more force, he is protected by the law. 26 Cr. L. J. 730=86 Ind. C. 218.

Clause (3)—The right of private defence of property commences when a reasonable apprehension of danger to the property commences 14 B. 441. This clause allows no right of private defence in cases where there is time to have recourse to the authorities 1 Weir 44.

The plea of private defence can be taken up in the appellate Court. A. I. R. 1926, Nag. 202. Under this section, the right of private defence against an injury apprehended to be done by a public servant extends only to those cases in which there is a reasonable cause of apprehensions of death or of grievous hurt being caused by the act of such public servant. 9 Lab. L. J. 424.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death, or of any other harm, to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

First.—Such an assault, as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

Secondly—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly—An assault with the intention of committing rape ;

Fourthly.—An assault with the intention of gratifying unnatural lust ;

Fifthly—An assault with the intention of kidnaping or abducting ;

Sixthly—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Scope.—Certain aggravated assaults which are here enumerated justify the exercise of the right of private defence to the extent of causing death (if that be necessary). The reference to the restrictions y be understood to apply to the those in the first and second -applicable —*Morgan and Macpherson*, 78

A person will be justified, in the exercise of his right of private defence of his person, in stabbing the assailant, when the latter attacks him with a knife inflicting a serious wound, even though the person exercising the right of private defence may have escaped further injury by resorting to less violence or by running away. 28 M. 454 = 3 Cr L J. 43 ; see also 8 P. L. R. 1906 = 3 Cr. L. J. 232. When the deceased tried to commit rape on the accused's wife, the latter was justified in killing him. Rat. Un Cr C. 867. This section gives the right of private defence of the body only against actual assailants. 3 Lah. 144 = 4 Lah. L. J. 91 = 68 Ind Cas 113 = 23 Cr L J. 513. An accused person, who pleads the benefit of the provisions of the Indian

Penal Code regarding the right of private defence, has to satisfy the Court affirmatively, by evidence which the Court can believe and act upon that he is entitled to the benefit of these provisions 1923 All. 277. Under this section detailed circumstances must be set out. 1928 Cal. 700.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues.

***Reasonable apprehension.**—There must be an attempt or a threat, and consequent thereon an apprehension of danger; but it is not a mere idle threat, or every apprehension of a rash or timid mind, that will justify the exercise of the right. Reasonable ground for the apprehension.

conduct amounts to a threat, and the other has reason to consider the danger to be imminent—*Morgan and Macpherson*, 79. Whether the right of private defence of his body, which the accused possessed was exceeded by him or not will depend not on the actual danger but on the apprehension of danger. . . . attacked defend himself to have 196-6 Cl. L. J. 2/1.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death, or of any other harm to the wrongdoer if the offence, the committing of

or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely :—

First—Robbery ;

Secondly.—House-breaking by night ;

Thirdly—Mischief oy fire committed on any building, tent or vessel, which building, tent, or vessel, is used as a human dwelling, or as a place for the custody of property ;

Fourthly.—Theft, mischief, or house-tresspass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

Comment—Violence is the characteristic of all offences enumerated in this section.—*Mayne's Criminal Law.*

Notes.—Under this section the right of private defence of property to the extent of causing deaths arises not only when house is broken into but when an attempt is made to break into the house 98 Ind Cas. 183—27 Cr. L. J. 1287—A. I. R. 1926 Cal 1012.

104. If the offence, the committing of which, or the attempting

When such right extends to causing any harm other than death.

to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any

preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Scope.—Under this section the right of private defence extends to the causing of any harm other than death subject to the restriction in section 99, that the harm not exceed that which is necessary for the purpose of defence. Here a person is enjoying the right of private defence of property.

Commencement and continuance of the right of private defence of Property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property commences when a reasonable apprehension of danger to the property has been recovered.

theft continues property, or either the property

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house breaking by night continues as long as the house trespass which has been begun by such house-breaking continues.

Notes—Where a person whose property has been stolen finds the thief or the property, he is not bound to put off the capture of the thief or the property, until he can find assistance from public authority. 7 Cr. L. J. 49=3 N. L. R. 117. The Penal Code does not give any right of private defence of property in regard to which an offence under s. 403 or 411 I. P. C. has been committed. 37 P. R. 1914 Cr.=16 Cr. L. J. 209=27 Ind. Cas. 833=219 P. L. R. 1915. If serious disorders are to be avoided the right of private defence must strictly be confined within the limits fixed by statute 7 Lah. 21=27 P. L. R. 280=96 Ind. Cas. 385.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration

A is attacked by a mob who attempts to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if, by so firing, he harms any of the children.

Principle—A man must not escape death by designedly causing the death of an innocent person but in the case supposed he is excused for causing an innocent person to run the risk of death—*Morgan and Macpherson*, 82.

CHAPTER V.

ABETMENT.

Abetment of a thing. **107.** A person abets the doing of a thing who—

First.—Instigates any person to do that thing ; or,

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public-officer is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B, abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to, or at the time of, the commission of an act, does anything, in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Application—Chapter V applies to offences punishable under s. 8, 121 A, 124 A, 225 A, 225B, 249A and 304 A.—Vide s. 13 of Act 22 of 1870.

Comment—When an offence is committed and several persons take part in the commission of it each person may contribute in a manner and degree different from the other to the doing of the criminal act. Mere knowledge or standing by while an offence under s. 379 is being committed cannot be covered by the definition of abetment. 1929 A. 1. R Sind 9. Emigration or assisting in the emigration is not an abetment within s 213—1928 Cal. 339.

The act may be done by the hands of one person while another is present, or is close at hand ready to afford help ; or, the actual doer may

be a guilty agent acting under the orders of an absent person, and besides these participators there may be other persons who contribute less directly to the commission of the offence by advice, persuasion, incitement or aid. It is proper to mark the nature and degree of participation which is essential to criminal liability, but it will be seen that the several gradations of action above referred to are not always treated as denoting necessarily different measures of guilt with a view to distinctions in respect of punishment.

The law concerning principal offenders and accessories or abettors is contained in sections 34 to 38 of Chapter II, and in the present chapter. The several definitions of offences throughout the Code, construed with reference to these provisions extend the operation of the Code to all who commit or abet the commission of an offence or who contribute to it in any degree which a penal law can notice.

"We have seen that several persons combining both in intent and
 ac whole
 alk buting
 to as his
 own part extends and as to the residue may be regarded as procuring
 it to be done by means of guilty agents. All the parties so concerned,
 stand in the mutual relation of principals and agents.

"The present chapter treats of criminal agency of a less direct and immediate kind, the agent being urged forward by a person who will not himself act, but who procures or instigates another to put in execution his criminal intention.

"The offence of abetment must mainly depend on the guilty knowledge or intention of the abettor. The knowledge and intention of the person he employs to act for him, will not affect or alter the abettor's guilt, although the acts of that person may have an important bearing in determining it. The measure of punishment which the Code awards to abettors depends on the effect of abetment, a distinction being made between cases in which the abetment is successful, and those in which the effect intended is not accomplished. If the act abetted is done, the abettor is punished as if he had himself committed the offence. If the act abetted is not done, he is punished less severely, but regard is had to the result of his abetment, any hurt which may be caused being deemed an aggravation of his offence. But no distinction seems to be made, as regards the abettor's punishment, between cases in which the person abetted involuntarily fails, or is prevented from carrying his intention into execution, and those in which he resists altogether the solicitations of the abettor.

"Again, the person abetted may be guilty of a criminal act and his abettor may in no way be answerable for it, because the act done goes beyond or is quite distinct from the act intended by the abettor, he must answer for any probable consequence of his abetment, notwithstanding

that the act or result may not be precisely what he intended, but he is not further responsible. The question will be this: Is the act done, although not precisely the act intended to be done, yet substantially the same, or a probable result of that act? If so, the abettor must answer for it. The sort of conduct which constitutes abetment is explained, but no rule is or could be laid down on the subject of the degree of incitement or the force of persuasion used, which will suffice to make a person an abettor"—*Morgan and Macpherson*.

General exceptions.—The provisions of this and all succeeding chapters, must be read with the foregoing chapters of General Explanations and General Exceptions. Construed with reference to the latter chapter, it is clear that those who cannot commit offence cannot be abettors of offences, therefore infants, insane persons and others excepted from criminal liability cannot be abettors—*Morgan and Macpherson*.

Scope of the section.—This section explains what acts or conduct of a person shall be deemed to constitute him an abettor of the doing of a thing whether such thing is in him an offence or not. The thing done may be criminal and yet no offence (in the language of the Code) infant or an insane person, distinguish between things guilty agents, this form of

Clause (1)—'Instigation' necessarily indicates some active suggestion or support or stimulation to the commission of the act itself which constitutes the offence and advice can become 'instigation' only if it is found that it was meant actively to suggest or stimulate the commission of an offence. Advice *per se* cannot necessarily be instigation under clause (1) and the conviction based upon the finding that the accused must have advised etc., is wrong. 5 P. L. J. 129—1 P. L. T. 60. Abetment by aiding or instigation necessarily means some action, suggestion or support or stimulation to the commission of the offence itself, negligence does not amount to abetment. 2 Pat. L. T. 73. Mere presence on the occasion of the commission of the offence does not amount to an abetment 43 Ind. Cas. 95.

Concealment.—As to mere omissions, such as an omission by a private person to give the police information respecting an offence, they cannot amount to instigation by concealment or otherwise, unless they are illegal,—that is, unless the law has imposed the duty of giving such information on the persons charged with the omission—*Morgan and Macpherson*.

Clause (2).—Two or more persons may be said to engage in a conspiracy, for the doing of a thing when they combine and agree to do it or to cause it to be done; but this combination alone will not make them abettors, though they may have discussed plans, adopted resolutions and interchanged promises of fidelity, unless an act in

pursuance of the conspiracy has taken place—*Morgan and Macpherson*. A knowledge on the part of the abettor, that the offence is intended to be committed is essential.—17 Cr. L. J., 175.

Clause (3).—Concealment which is wilful and relates to a fact which a person is bound to disclose, constitutes abetment by aid, the aid being given by this illegal omission—*Morgan and Macpherson*, 86.

Notes.—A person aiding must know that he is aiding a criminal act 1928 Nag. 257.

108. A person abets an offence who abets either the omission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused.

Illustrations.

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder

(b) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(a) A instigates B, a lunatic, to commit an offence by a person capable by the same intention as A. B, not, is guilty of abetting

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A, and causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner

B had been capable by law of committing an offence, and had committed murder, and he is, therefore subject to the punishment of death.

(c) A, instigates B to set fire to a dwelling-house B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession A induces B to believe that the property belongs to A B takes the property out of Z's possession, in good faith, believing it to be A's property B, acting under this misconception, does not take dishonestly and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore, committed the offence defined in this section, and is liable to the punishment for murder.

Intention.—To constitute a man the abettor of a crime committed by another, it must be clearly established that both intended to commit or further the same crime.—*Rat. Un. Cr. Cas.* 93.

Explanation (1)—If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, he abets the offence of which such public servant is guilty—although the abettor, being a private person, could not himself have been guilty of that offence.—*Morgan and Macpherson*

Explanation (2)—In the punishment of abetment regard is had to its effect, but the offence is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow.—*Ibid.*

Explanation (4)—The words “when the abetment of offence is an offence” in this explanation, do not mean “when the abetment of an offence is actually committed” They mean when the abetment of an offence is by definition or description an offence under the Code, that is when an offence is punishable under s 109 or s 116 or some other provisions of the Code, then the abetment of such abetment is also an offence. 22 C. W. N. 1045

108A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India

Abetment in British India of offences outside it.

Illustration.

A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

Amendment—This section has been added by the Indian Penal Code Amendment Act (IV of 1898) S. 3.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished

with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(2) A instigates B to give false evidence. B, in consequence of the guilty of abetting that offence, in pursuance of the conspiracy, procures the poison, and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Omission—Abetment by omission is punishable only if the omission is an illegal omission. 9 Bom. L. 159.

Conspiracy—Under the Indian Criminal Law, conspiracy, except in certain cases, is a mere species of abetment, when an act or illegal omission takes place in pursuance of the conspiracy.

means abetting, in itself, to a criminal offence. The Penal Code follows the English law of conspiracy only in a few exceptional cases, which are made punishable under ss. 311, 400, 402 and 121 A of the Penal Code. In these cases whether an act is done or not, or an offence committed in furtherance of the conspiracy, the conspirator is punishable and he can also be punished separately for every offence committed in furtherance of the conspiracy. In all other cases, conspiracy is only one species of "abetment of an offence" and stands on the same footing as abetment by intentional aiding. 24 M, 523. A conspiracy is a mere species of abetment and every time the commission of that offence is abetted, a separate offence of the abetment of that offence is committed and a separate charge lies. U B. R. (1897—1901 Vol I 249). But a man cannot be charged as an abettor by conspiracy as well as a perpetrator of the offence abetted cumulatively. 24 M 523. See also, 24 Ind. Cas. 976. But now see Chapter V A. *infra* which was enacted following the English law of conspiracy. An agreement to commit the offence of criminal intimidation amounts to a criminal conspiracy. L. R. 4 A. 145 Cr.

Procedure—Cognizable if the offence abetted is cognizable—Warrant or summons as in the offence abetted—Bailable or not as in the offence abetted—compoundable or not as in the offence abetted—and the offence is triable by the Court by which the offence abetted is triable.

Charge—I (name and office of magistrate, etc) hereby charge you (name of the accused) as follows:—

That X. Y (the name of the principal, and if the person is unknown in that case say, that an unknown person) on the day of at committed the offence of , and that you at abetted the said X Y (or the said unknown person) in the commission of the said offence of , which was committed as a result of your abetment, and you have thereby committed an offence punishable

under section 109 and _____ of the Indian Penal Code, and within my cognizance (or within the cognizance of the Court of Session).

And I hereby direct that you be tried on the said charge (by the said Court).*

In case of joint trial of the principal offender and the abettor, the charge should be as follows —That you _____, on or about the day _____ of _____, at _____ abetted the commission of the offence of _____ by _____ which was committed as a result of your abetment, and that you have thereby committed an offence punishable under section 109 and _____, of the Indian Penal Code, and within the cognizance of my Court (or within the cognizance of the Court of Session).

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed, if the act had been done with the intention or knowledge of the abettor, and with no other.

Procedure.—Vide Procedure under s. 109

111 When an act is abetted, and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment

Illustrations.

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was, under the circumstances, a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft, for the theft was a distinct act, and not a probable consequence of the burning.

* Where the offence is tried by a Magistrate omit the words in the brackets.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Guilty knowledge.—The test in such a case, must always be whether, having regard to the immediate object of the instigation or conspiracy the act done by the principal is one which according to ordinary experience and common sense, the abettor must have foreseen as probable. 6 A. 491.

Procedure.—Vide Procedure under s. 109.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted, and for act done.

Illustration.

A instigates B to resist by force a distress made by a public servant B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offences of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Note—As to the application of ss. 112, 114 and 115 to offences under special or local laws, see s. 40 *supra*.

113. When act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner, and to the same extent, as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

Illustration.

A instigates B to set on fire a house belonging to C.

Procedure.—Vide Procedure under s. 109.

114. Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Scope.—This section implies that abetment had been completed before the actual offence was committed. The section deals with a person who would be guilty of abetment independent of any act done at the time of the offence, i.e., a person whose abetment is complete apart from his presence. It denies the liability of such a person if he happens to be present when the offence is committed. 82 Ind. Cas. 262, 1924 P. L. J. 1254. The effect of this section is that, if a man is present at the commission of an offence, he is deemed to have committed it, not that he has actually committed it. 13 Bom. L. R. 26. See also 29 C. 496, 4 L. B. R. 271, 49 J. 49; 27 C. 566, 7 W. R. Cr. 49, 8 B. H. C. Cr. 64, 11 C. P. R. 2 Cr., Rat. Un Cr. C. 303, 5 C. W. N. 250; 23 M. L. J. 722; C. 422, 9 C. W. N. 69, 3 C. W. N. 605.

When an accused person is charged under ss. 114 and 302 and tried therefor he must be convicted under ss. 114 and 302. 50 C. 41-74, 1 Ind. Cas. 267. This section implies that the abetment had been completed before the actual offence was committed. 82 Ind. Cas. 262-25. L. J. 1254. This section is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved.

1 crime is

able along

29 C. W. N.

31, 21 L. W. 19. In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in some steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. 26 Cr. L. J. 1069-88 Ind. Cas. 13.

procedure.—Vide Procedure under s. 109

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of offence punishable with death or transportation for life—

If offence not committed;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration

Q. A. — Sec. 3. The offence is not committed if B had

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of the accused person) as follows —

That you, on or about the day of , at , abetted the commission by one A of an offence of punishable with death or transportation for life, although the said offence was not committed in consequence of the abetment, and thereby committed an offence punishable under s. 115 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session)

And I do hereby direct that you be tried "by the said court"* on the said charge.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and

Abetment of offence punishable with imprisonment—

if offence be not committed ;

no express provision is made by this Code for the punishment of such abetment, he shall be punished with imprisonment of any description provided for that offence for a term which may extend to one fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both ;

and, if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence for a term which

if abettor or person abetted be a public servant whose duty it is to prevent offence.

* In cases triable by Magistrate these words should be omitted.

may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe, A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment

Ind Cas. 679

Procedure—Vide procedure under s. 109

Charge.—I (name and office of Magistrate, etc.,) hereby charge you (name of the accused person) as follows—

That you, on or about the day of , at , abetted the commission by one A of an offence of punishable with imprisonment, although the said offence was not committed in consequence of the abetment, and thereby committed an offence punishable under s. 116 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session.)

And I direct that you be tried "by the said court"* on the said charge.

117. Whoever abets the commission of any offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or

Abetting commission of an offence by the public or by more than ten persons,

with both

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members, to meet at a certain time and place,

* In cases triable by Magistrate these words should be omitted.

for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

Notes ~3 W. R. Cr. 24; A. I. R. 1923 Lah 1.

Procedure.—Vide procedure under s 109.

Charge—1 (name and office of Magistrate) hereby charge you (name of the accused) as follows —

That you, on or about the _____ day of _____ at _____, abetted the commission of an offence of _____ by _____ numbering more than ten _____, and thereby _____ Penal Code, _____ 1st of Session) _____ on the said _____

charge.

Concealing design to commit offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design.

shall, if that offence be committed, be punished with imprisonment of, either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration.

A, knowing, that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

Proceduro - Vide procedure under s 109. Only the offence is not bailable, if the offence is committed, otherwise bailable

* In cases triable by Magistrate these words should be omitted

Charge—I (*name and office of Magistrate, etc.*) hereby charge you as follows:—

That you, on or about the day of , with intention of facilitating or knowing it to be likely that you will thereby facilitate, the commission of the offence of (*name the act*) [or omit to do. (*name the omission*)] to conceal the existence of the design to commit the said offence, and thereby committed an offence punishable under s 118 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session)

And I do hereby direct that you be tried "by the said Court"* on the said charge.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, which it is his duty as such public servant to prevent,—

Public servant concealing design to commit offence which it is his duty to prevent—
voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence he committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

If offence be punishable with death, &c ;
or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and, knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence.

* In cases triable by a Magistrate these words should be omitted.

Here A has, by an illegal omission conceals the existence of B's design, and is liable to punishment according to the provision of this section.

Procedure.—*Vide* procedure under s. 109. If the offence be punishable with death or transportation for life, it is not bailable and if the offence be not committed it is bailable.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you as follows —

That you, on or about the day of at being a public servant, whose duty as such public servant was to prevent the commission of such offence of with intention of facilitating or knowing it to be likely that you will thereby facilitate, the commission of the offence of (*name the act [or omit to do .(name the omission)]*) to conceal the existence of the design to commit the said offence, and thereby committed the offence punishable under s. 119 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session).

And I do hereby direct that you be tried "by the said Court"* on the said charge.

Concealing design to commit offence punishable with imprisonment—**120.** Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Procedure.—*Vide* Procedure under s. 109. If the offence has not been committed then it is bailable.

Charge.—Same charge as under s. 118.

* In cases triable by a Magistrate these words should be omitted.

CHAPTER VA.

CRIMINAL CONSPIRACY.

120A. When two or more persons agree to do or cause to be done,—

Definition of criminal conspiracy. (1) an illegal act, or
(2) an act which is not illegal by illegal means,

such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof

Explanation—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object

Amendment—Inserted by Act 8 of 1913.

Scope—Where the proof of a conspiracy depends upon the proof of the participation of the accused in an overt act which itself amounts to an offence, the proper course is to put the accused on their trial for that offence. Where all that is shown against a person is evidence of his association with any of the conspirators that would not be sufficient to convict him of being one of the parties to the conspiracy and he comes within this section 39 C L J 151.

Conspiracy—A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When to agree to carry it into effect the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced if lawful, is punishable, if for a criminal object or for the use of criminal means 14 A L J 688. When the proof of a conspiracy depends upon proof of the participation of the accused in an overt act which itself amounts to an offence the proper course is to put the accused on their trial for that offence 83 Ind Cas 513=39 C L J 151. Actual commission of an illegal act need not be proved 1928 Rang 118.

120B (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, where no express provision is made in this Code for the

ment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence, punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both

Scope—The words "where no express provision is made in this Code for the punishment of such a conspiracy," refer entirely to the quantum of the punishment to be inflicted in the event of conviction under the section and do not lay down any limitation against a charge under this section even when the accused has actually committed an offence under some other section of the Penal Code 2 Mys. L. J. 11.

Conspiracy may be proved by circumstances.

Charge to the jury—What it should contain, *vide* 25 Cr. L. J. 761 = 81 Ind. Cas. 249

Procedure—The offence under sub-section (1) is cognizable, if the offence which is the object of the conspiracy is cognizable, but not otherwise. A warrant or summons should issue according as a warrant or

If it falls under sub-section (2) it is—Non-cognizable—Summons should issue—Bailable—Not compoundable and is triable by the Presidency Magistrate or Magistrate of the 1st class.

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows.—

That you on or about the _____ day of _____ at _____ agreed with (name of the conspirator), to do (or caused to be done) an

_____ said Court, on the said charge.)

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death or transportation for life, "and shall also be liable to fine."

Illustrations.

(a) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

Amendment—The words within quotations have been substituted by Act 16 of 1921.

Waging war—A person who takes part in an organised armed attack on the constituted authorities, that attack having for its object the subversion of British Raj and the establishment of another Government is guilty of an offence under this section. 42 Madh J 101. Where in order to establish a republic in this country the accused actively suggested to his audience that they should use violence or stimulated them to use violence to achieve that purpose he is guilty under this section. 24 Bom L. R 885

The validity of a conviction under s. 121 is not affected by the striking off of the convictions of other offences, forming component parts of the offence of waging war. 90 Ind Cas 297=26 Cr L. J. 1513

Procedure—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of accused person) as follows—

That you, on or about the _____ day of _____, at _____, waged war (or attempted to wage war, or abetted the waging of war) against His Majesty the King Emperor of India and thereby committed an offence punishable under s. 121 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court)

And I hereby direct that you be tried by the said Court on the said charge.

121A Whoever, within or without British India, conspires, to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any

Conspiracy to commit offences punishable by section 121.

patt thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years "and shall also be liable to fine."

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Amendment—This section has been added by Act 27 of 1870

Scope—The requirement of law that complaint under this section should not be made without special authority from Government is no terms of that section
 itical situation of the
 ie law however, are,
 n men or means are
 required to satisfy the definition of a conspiracy to wage war. No act or
 ch a conspiracy, the mere agreement
 38 C 569 The essence of an offence
 to do all or any of the unlawful acts
 not necessary that any act or illegal
 rsuance of the agreement 35 M. 247.

Procedure—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge—I (name and office of Magistrate, etc) hereby charge you (name of the accused) as follows.~

That you , on or about the day of , at within British India (or without British India) conspired to wage war (or abet the waging of war) against His Majesty the King Emperor of India, (or conspired to deprive the King Emperor of the sovereignty of British India or any part thereof, or conspired to overawe by means of criminal force or show of criminal force the Government of India or any Local Government, and thereby committed an offence punishable under s. 121 of the Indian Penal Code and within the cognizance of the Court of Session (or High Court)

And I hereby direct that you be tried by the said Court on the said charge.

122. Whoever collects men, arms, or ammunition, or other-
 Collecting arms &c., with wise prepares to wage war with the intention
 intention of waging war of either waging or being prepared to wage
 against the Queen. war against the Queen, shall be punished

with transportation for life or imprisonment of either description for a term not exceeding ten years, "and shall also be liable to fine."

Amendment.—The words within quotations have been substituted by Act XVI of 1921.

Scope.—The acts made punishable by this section cannot be considered as attempts; they are in truth preparations made for committing the offence of waging war. Such acts would seem to constitute the doing of an abettor, if done in aid of others who are waging or who intended to wage war.—*Morgan and Macpherson*

Procedure—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of session.

Charge—I (name and office of Magistrate, etc.), hereby charge you (name of the accused) as follows :—

That you—on or about the day of , at collected men (or arms or ammunition) with the intention of waging war (or being prepared to wage war) against His Majesty the King Emperor, and thereby committed an offence punishable under s. 122 of the Indian Penal Code, and within the cognizance of the Court of Session or High Court.

And I hereby direct that you be tried by the said Court on the said charge

123. Whenever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—The persons hereby comprised are the same as those in the previous sections. The offence punished by this section is like a species of abetment by aid, such as is mentioned in section 118 of the preceding Chapter. The concealment here may be either by an act or by an illegal omission but must be a concealment with an intention and knowledge which show a wish to facilitate the execution of a design to wage war; and the existence of the design must be proved.—*Morgan and Macpherson* 103

Procedure—Non cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge—I (name and office of Magistrate, etc.) Charge you (name of the accused) as follows —

That you on or about the day of , at , concealed the existence of a design of waging war against the King Emperor, intending by such concealment to facilitate (or knowing it to be likely such concealment would facilitate) the waging of such war, and

you have thereby committed an offence punishable under s. 123 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court.)

And I hereby direct that you be tried by the said Court on the said charge

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or, the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

assaults or wrongfully restrains, or attempts wrongfully to restrain or overawe, by means of criminal force, or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant Governor, or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge—I (name and office of Magistrate, etc.) Charge you (name of accused) as follows :—

That you, on or about the _____ day of _____, at _____, with the intention of inducing (or compelling) the Right Hon'ble A. B, the Governor General of India (or the Governor of the _____ Presidency, or the Lieutenant Governor of _____, or the Hon'ble A. B, a Member of the Council of the Governor General of India, or the Council of the Governor of the _____ Presidency) to exercise (or refrain from _____) wrongfully _____ by means _____, and _____ s. 124 of _____ Court of Session (or High Court.)

And I hereby direct that you be tried by the said Court on the said charge.

124A. Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into

Sedition.

hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years to which fine may be added, or with fine.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2—A Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

Amendment—S 124A has been substituted by the Indian Penal Code Amendment Act (IV of 1898) s 4. for original s. 124 as inserted by the Indian Penal Code Amendment Act. 22 of 1870 s 5.

Disaffection and disapprobation—Any one who by any of the means referred to in the section attempts to excite feelings of disaffection towards the Government or attempts to excite, as the case may be, any such feelings, shall be punished with imprisonment for life, or with imprisonment for any term not exceeding ten years, or with fine, or with any two or more of these punishments, in the discretion of the Court. The word ‘disaffection’ means disloyalty. 20A 55 (F. B) The meaning of the Explanation in this section is that a loyal subject who disapproves of Government measures is not to be deemed disloyal or disaffected on that account, if, notwithstanding his disapprobation of such measures, he is ready to obey and support government. If he is at heart loyal, he is not disaffected, merely because he disapprobates certain measures of Government. 22B. 152 (F B) Disaffection means a feeling contrary to affection, in other words dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man’s sentiment or action and to like him. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling. 19 C 35. Disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will towards the Government. Disloyalty, is perhaps the best general term comprehendin

every possible form of bad feeling towards the Government. The amount or the intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment. It is also absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. The section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. 22B 112 See also 30B 421, 7 C L J 49, 35 C. 945; 32M. 384, 32M 338; 12 Bom L R 675, 37 C 467; 1 P R 1905 Cr; 39 C. 522; 16 C. W. N. 812, 15 C W N. 141, 37 P. W. R. Cr. 1907; 10 Bom. L. R. 848, 14 P W R. 1907 Cr, 38 C 214. In order to attempt to excite hatred, the standpoint of the 74 Ind Cas 954.

In order to decide whether or not a speech constituted an attempt to excite hatred, contempt or disaffection, it should be viewed from the standpoint of the type of persons to whom it was primarily addressed. 1 Rang. 211=74 Ind Cas. 954. A writer cannot commit offences both under s 124A and s 153A in the same article published in a paper. 25 Cr L J 614=81 Ind. Cas. 102. In a case under this section the Court is to consider the state of the country and the minds of the people. 83 Ind Cas 638=1925 P 99. Intention is an essential element in an offence of sedition. 82 Ind. Cas 574=25 Cr L J 1342.

The knowledge by a printer of the contents is a question to be determined on the particular facts of each case. 84 Ind. Cas 446=26 Cr. L. J. 302. used's name appearing or o prove his authorship : : - cases, as a general rule, inadmissible. 16 S. L R 156=84 Ind Cas 448=26 Cr. L. J 304. A trial for sedition should be by a special jury. 1928 A. I. R. Bom. 74.

Procedure.—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge. I, _____, of the office of Magistrate, etc. do hereby charge you,

British India) and thereby committed an offence punishable under s. 124A, and within my cognizance (or the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried [by the Said Court (in cases tried by Magistrate omit these words)] on the said charge.

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with

Waging war against any Asiatic Power in alliance with the Queen

the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to

which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Procedure—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session.

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of accused person) as follows—That you,—on or about the—day of —, at—, waged war (or attempted to wage war, or abetted the waging of war) against the Government of —an Asiatic Power in alliance (or at peace) with the King Emperor of India, and thereby committed an offence punishable under s. 125 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

And I hereby direct you that you be tried by the said Court on the said charge

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories

Committing depredation on territories of Power at peace with the Queen.

of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term

which may extend to seven years, and shall also be liable to fine, and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation,

Procedure—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows—

That you,—on or about the—day of—, at—, committed (or made preparations to commit) depredation on the territories of—, a Power in alliance (or at peace) with the King—Emperor, and that you have thereby committed an offence punishable under s. 126 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court)

And I hereby direct that you be tried by the said Court on the said charge

127. Whoever receives any property, knowing the same to

Receiving property taken by war or depredation mentioned in sections 125 and 126.

have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which

may extend to seven years, and shall also be liable to fine, and to forfeiture of the property so received.

Procedure.—Non-cognizable—Warrant—Not bailable—Not compoundable—Exclusively triable by the Court of Session.

Charge—That you on or about the day of at received (*specify the property*) knowing the same to have been taken in waging war, against an Asiatic Power in alliance (or at peace)

cognizance of the Court of Session (or High Court)

And I do hereby direct that you be tried by the said Court on the said charge.

128. Whoever, being a public servant, and having the custody

Public servant voluntarily of any State prisoner or prisoner of war, allowing prisoner of State voluntarily allows such prisoner to escape or war to escape.

from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

Procedure—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session

Charge.—I (*name and office of Magistrate, etc.*), hereby charge you (*name of accused*) as follows.—

That you , being a public servant (*mention the office*), and as such having the custody of , a state prisoner (or prisoner of war), on or about the day of , at , voluntarily allowed such prisoner to escape from , the place in which such prisoner was confined, and thereby committed an offence punishable under s. 128 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court).

129 Wh- - - - - the custody

Public servant n ner of war, suffering such pr er to escape escape.

from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Procedure—Non-cognizable—Warrant—Bailable—Not compoundable—Triable by the Court of Sessions, Presidency Magistrate or Magistrate of the First class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows —

That you , being a public servant (*mention the office*), and as such having the custody of , a state prisoner (or prisoner of war), on or about the day of at , voluntarily allowed (or negligently suffered) such prisoner to escape from the place in which such prisoner was confined, and thereby committed an offence punishable under s. 129 of the Indian Penal Code and within the cognizance of the Court of Session (or High Court).

And I hereby direct that you be tried by the said Court on the said charge

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers, or attempts to offer, any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

Procedure—Non-cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows —

That you on or about the day of , at , knowingly aided (or assisted) or rescued (or attempted to rescue) a state prisoner (or prisoner of War) in escaping from lawful custody (or knowingly harboured or concealed) a state prisoner (or prisoner of War) who had escaped from lawful custody [or knowingly offered or attempted to offer resistance to the re-capture of a state prisoner (or prisoner of war) who had escaped from lawful custody], and thereby committed an offence punishable under s. 130 of the Indian Penal Code, and within the cognizance of the Court of session (or the High Court)

And I hereby direct that you be tried by the said Court on the said charge.

CHAPTER VII

OF OFFENCES RELATING TO THE ARMY "NAVY AND AIR FORCE."*

Notes.—The present chapter punishes persons who, not being themselves soldiers or sailors, abet soldiers and sailors in committing gross breaches of discipline. The laws which govern the Army and Navy cannot generally reach such offenders, and the other provisions of this Code do not reach such offenders because the act of insubordination, etc., which they abet, however grave are a breach of military discipline, may be no offence, or a very trivial one, under this Code. Hence the necessity of this Chapter which punishes, but not with the severity of military Penal law, the abettors of soldiers and sailors in certain breaches of discipline.—*Morgan and Macpherson*

131. Whoever abets the committing of mutiny by an officer, soldier, "sailor or air man"* in the army attempting to seduce a "navy or air force," of the Queen, or soldier, sailor or air man attempts to seduce any such officer, soldier, from his duty, "sailor or air man"* from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation—In this section the words "officer" and "soldier and air man" include any person subject to the "Army Act, the Indian Army Act, 1911, or the Airforce Act, as the case may be"*

In s. 131. the explanation has been added by the Indian Penal Code Amendment Act (XXVII of 1870) s. 6

Procedure—Cognizable—Warrant—Not bailable—Not Compoundable—Triable by a Court of Session

Charge.—I (name and office of Magistrate, etc.), hereby charge you (name of accused) as follows.—

That you on or about the day of, at, abetted the commission of mutiny by an officer (or soldier, or sailor, or of the King Emperor from committed an offence punishable and within the cognizance

And I hereby direct that you be tried by the said Court on the said charge.

* Substituted by Act X of 1927.

Notes—The first part of this section relates to offence of abetting mutiny. The offence contemplated is an abetment which is not followed by actual mutiny, or which, supposing actual mutiny follows, is not the cause of mutiny. The offence of mutiny consists in extreme insubordination, as if a soldier resist by force, or if a number of soldiers rise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature. Acts of a riotous nature directed against the Government or Civil Authorities rather than against military superiors seem also to constitute mutiny. A charge brought under this section must be supported by proof of instigation or other mode of abetment (section 107), and of the object, i. e. to excite the mutiny—*Morgan and Macpherson*.

132. Whoever abets the committing of mutiny by an officer, soldier, "sailor or airman" * in the army or

Abetment of mutiny, if mutiny is committed in consequence thereof.

navy "or airforce" * of the Queen, shall, if mutiny be committed in consequence

of that abetment, be punished with death

or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes—The offence here punished is abetment when actual mutiny is the consequence of it. The evidence should show that mutiny has been committed and the previous abetment—*Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session

Charge—I (name and office of Magistrate etc) hereby charge you (name of the accused) as follows—

That you, on or about the—day of—at—, abetted the commission of mutiny by—, an officer (or soldier, sailor or air man) in the Army [(Navy or Air force) of the King Emperor] and mutiny was committed in consequence of that abetment, and thereby committed the offence under section 132 of the Indian Penal Code, and within the cognizance of the Court of Session (or the High Court).

And I hereby direct that you be tried on the said charge.

133. Whoever abets an assault by an officer, soldier "sailor, or airman" * in the army, navy "or airforce" *

Abetment of assault by soldier, sailor or airman on his superior officer when in execution of his office.

of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may

extend to three years, and shall also be liable to fine.

* Substituted by Act X of 1927.

Notes—The very comprehensive definition of assault given in section 351 may be referred to, in order to ascertain the offence; (as made punishable by this act) may be probably be it provide against, namely "violence against a superior officer" of course exclude from this provision such assaults as one private soldier may commit on another. But they clearly comprehend all officers whether commissioned or non-commissioned,—for a non-commissioned officer is a superior officer in relation to a private soldier, as a Captain is to a subaltern, and the commanding officer of a Regiment to all the officers and men under his command. It is an inseparable part of this offence, that the officer should be assaulted while in the execution of his office. An officer is in the execution of his office not only when he is performing a prescribed duty, but also when he is discharging a duty arising out of the exigency of the moment. Thus an officer seeing a soldier out of quarters after—hours or improperly dressed or drunk in the streets of a town, or transgressing any order or usage of the service, would at all times be in the execution of his duty, and therefore of his office, in ordering the soldier to his barracks or directing such other measure as might be necessary. It must, however, be remembered, that an important ingredient in the soldier's offence is, that he offers violence knowingly to his officer. If he strikes a person whom he or his abettor really does not know to be an officer, the offence of abetment which is here made punishable so severely has not been committed by the person who abets the blow—*Morgan and Macpherson*.

Procedure.—Cognizable — Warrant — Notbailable — Not compoundable—Triable by a Court of Session, Presidency Magistrate or Magistrate of the first class

committed an offence punishable under s. 133, of the Indian Penal Code and within my cognizance (or within the cognizance of the Court of Session)

And I hereby direct that you be tried [by the said Court (in cases tried by Magistrate omit these words)] on the said charge.

134. Whoever abets an assault by an officer, soldier, "sailor or air man" in the army, "navy or air force" of the Queen on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes—An enhanced punishment is given, if the assault is actually committed

Procedure—Cognizable—Warrant—Not bailable—Not compoundable—Triable by a Court of Session

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows—

That you, on or about the day of at , abetted an assault by an officer (or soldier or sailor or airman) in the Army (or Navy or air force) of the King Emperor on a superior officer being in execution of his office, and which he committed in consequence of such abetment, and thereby committed an offence punishable under section 134 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of Session or the High Court), etc.

135. Whoever abets the desertion of any officer, soldier, "sailor or air man" in the army, "navy or air force" of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Abetment of desertion of soldier, sailor or airman.

Notes—The offence of desertion from the Army or Navy consists in this, that the officer, soldier or sailor is unlawfully absent from his duty, and has no intention of returning to it. Whether he departs without leave from his regiment, or whether, having leave of absence, he overstays his leave, if his intention is not to return to his duty and his regiment, he is a deserter. This intention not to return is essential to desertion, and without it, the offence becomes one which is known in military law as "absence without leave," an offence of a much lighter kind. The section, it seems, punishes the abetment of desertion only when the desertion actually takes place *Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the First or Second class

* Substituted by Act X of 1927.

Charge—I (*name and office of Magistrate etc.*) hereby charge you (*name of accused*) as follows —

That you on or about the day of , at—
abetted the desertion of , an officer (or soldier, or sailor or
air man) in the Army (or Navy or air force) of the King Emperor,
and thereby committed an offence punishable under s. 135 of the Indian
Penal Code, and within my cognizance

And I hereby direct that you be tried of the said charge

136. Whoever, except, as hereinafter excepted, knowing or
having reason to believe, that an officer,
Harbouring deserter. soldier, "sailor or airman"* in the army
"navy or air force"* of the Queen has deserted, harbours such
officer, soldier, sailor, or airman shall be punished with imprisonment
of either description for a term which may extend to two years, or
with fine, or with both.

Exception—This provision does not extend to the case in which
the harbour is given by a wife to her husband

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—
Triable by a Presidency Magistrate or Magistrate of the First or Second
class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you—
—as follows —

That you—on or about the—day of, at—, knowing, or having reason
to believe that—, an officer (or soldier, or sailor, or airman) in the Army
(or Navy or Air force) of the King-Emperor had deserted, harboured
such officer, (or soldier or sailor or airman), and thereby committed an
offence punishable under section 136 of the Indian Penal Code, and
within my cognizance.

And I hereby direct that you be tried on the said charge.

137. The master or person in charge of a merchant-vessel on
board of which any deserter from the army
Deserter concealed on board merchant-vessel
through negligence of master, "navy or air force" of the Queen is con-
cealed, shall, though ignorant of such con-
cealment, be liable to a penalty not exceed-
ing five hundred rupees, if he might have known of such conceal-
ment, but for some neglect of his duty as such master or person in
charge, or but for some want of discipline on board of the vessel.

Notes.—This stringent provision, which was not in the Code as
originally prepared, is taken from an Act directed against the mischief
and loss to the Government occasioned by the encouragement given to

*Substituted by Act 10 of 1927.

desertion by the Masters of merchant vessels. This section enacts as a part of the definition of an offence what, at the most, is only evidence of an offence. When a deserter is found "concealed on board a vessel," it is not unreasonable to presume that the master, or person in charge, knows that he is there, and that he harbours the deserter. If the master can satisfactorily rebut this presumption by proving that he really knew nothing of the matter it seems just to allow him to do so; but, according to this provisions, his ignorance, however honest, will not save him if there has been "neglect of duty" or "want of discipline" on board,—vague expressions, the proof or disproof of which are equally difficult—*Morgan and Macpherson*.

Procedure—Non-cognizable—Summons—Bailable—Non-compoundable—Triable by a Presidency Magistrate or Magistrate of the first or second class and is triable summarily

Charge.—I (name and office of Magistrate, etc.) hereby charge you—as follows—

That _____, a deserter from the Army (or Navy or Airforce) of the King Emperor, had concealed himself on or about the _____ day of _____, at _____ on board _____ a merchant vessel of which you _____ are the master (or person in charge) through your neglect of duty as such master (or person in charge) [or through want of discipline on board the said vessel] and that you have thereby committed an offence punishable under s. 137 of the Indian Penal Code and within my cognizance

And I hereby direct that you be tried on the said charge

138 Whoever abets what he knows to be an act of insubor-

Abetment of an act of in-
subordination by soldier or
sailor, dination by an officer, soldier, "sailor or
airman" in the army "navy or airforce" of
the Queen, shall, if such act of insubordi-
nation be committed in consequence of that abetment, be punished
with imprisonment of either description for a term which may
extend to six months, or with fine, or with both.

Notes.—Provision is only made for those cases of abetment which are actually followed by acts of insubordination. In the present section it is expressed as part of the definition of the offence that the abettor knows the quality of the act abetted, that is, he knows it to be an act of insubordination. The expression "insubordination" appears, used in the Mutiny Act, 1858, to have no definite meaning, when carried to an actual mutiny, must, to be "insubordinate." Any sailor will constitute an act of insubordination. This clause *Morgan and Macpherson*.

Procedure.—Cognizable—Warrant—Bailable—Not compoundable
 —Triable by a Presidency Magistrate or Magistrate of the first or second class and may be tried summarily.

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows —

That you, on or about the day of at abetted what you know to be an act of insubordination by , an officer (or soldier or sailor or airman) in the Army (or Navy or Airforce) of the King Emperor and such act of insubordination was committed in consequence of the said abetment, and you thereby committed an offence punishable under s 138 of the Indian Penal Code, and within my cognizance,

And I hereby direct that you be tried on the said charge.

138A. The foregoing sections of this chapter shall apply as if

Application of foregoing her Her Majesty's Indian Marine Service sections to the Indian were comprised in the navy of the Queen. Marine Service

Notes—S 138A has been inserted by the Indian Marine Act (XIV of 1887,) s. 79

139 No person subject to "the Army Act, the Indian Army

Persons subject to Act, 1911, the Naval Discipline Act or the Articles of War. Air Force Act,* is subject to punishment under this Code for any of the offences defined in this chapter.

140. Whoever, not being a soldier "sailor or airman"* in the

Wearing garb or carrying military "naval or air"*service of the Queen token used by soldier, wears any garb, or carries any token resembling any garb or token used by such a soldier, "sailor or airman" with the intention that it may be believed that he is such a soldier "sailor or airman" shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Notes.—This section, assuming that soldiers and airmen only and not

provides a punishment for 'fraudulent intension' of their will probably be compoundable

Charge—I (name and office of Magistrate etc.) hereby charge you (name of accused) as follows.—

*Substituted by Act X of 1917.

That you , not being a soldier in the Military (or Naval) service of the King Emperor, on or about the day of at , wore (*mention the garb*) [or carried a token resembling (*mention it*)] [or used by such soldier] with the intention that it might be believed that you were such a soldier, and thereby committed an offence punishable under s. 140 of the Indian Penal Code, and within my cognizance

And I hereby direct that you be tried on the said charge.

CHAPTER VIII.

OF OFFENCE AGAINST THE PUBLIC TRANQUILITY.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First.—To overawe, by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant ; or,

Second.—To resist the execution of any law or of any legal process , or,

Third.—To commit any mischief or criminal trespass, or other offence ; or,

Fourth —By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or,

Fifth —By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Ingredients.—In order to sustain a conviction under this section it is necessary to find that the person accused of that offence was a member of an unlawful assembly, and that he used force or violence in prosecution of the common object of such assembly 1923 Lah 692. The intention indicated by the heading of Ch. VIII. is that the offence

inserted, was to constitute certain acts, which endangered the public peace, into offences against public tranquility, but it does not follow from it either that a person may do what he is entitled to do or prevent another from doing what he is not entitled to do by means of criminal force or show of criminal force. In construing this section regard must be had not only to the general intention deducible from the heading of the chapter, but also to the specific mode in which the legislature intended to carry out the intention 14 M 126. The mere use of criminal force or show of criminal force to any person to take possession of any property, is not sufficient to bring the case within the clause, unless some criminal intent is proved against the person so using force or making a show of force. 12 C. W. N. 95 Clause (2) can not have the effect of making an assembly of persons unlawful assembly if the object with which they assembled was a perfectly legal one. 29 C 244-6 C. W. N. 164, 1 Wier 64, 7 N. W. P. 209 The mere fact that the accused went to the land prepared to overcome any resistance, their common object could not be said to come within the perview of s 141 Cl 4 16 Cr. L. J. 536-29 Ind Cas 664 The essence of the offence is that the members of the assembly must have some common object 84 P. R. 1868. To constitute an unlawful assembly within the meaning of this section it is not necessary that the persons composing the assembly should have assembled with a previously arranged common object It is sufficient if from their actions a common object may be inferred, and such object

587; 27 Cr. L. J. 337-92 Ind Cas. 849-A 1. R 1925 Rang. 362;
31 C. L. J. 849.

Clause 4, is meant to prevent the resort to force in vindication of supposed rights. 11 Bom L. R 849-3 Ind. Cas 958-10 Cr. L. J. 427. The common object of an unlawful assembly is to be ascertained from the acts and language of the members composing it and from a consideration of all the surrounding circumstances 24 M. 124-1 Weir 53.
is to prevent the resort to force
Bom. L. R. 849; see also 16 C.

206; 17 C. W. N. 1132. But a person is justified in protecting his own rights. 3 C. 572; 28 W. R 25; 9 W. R. 66; 5 C. W. N. 368; 24 C. 686; 81 Ind Cas. 113, 25 Cr. L. J. 625; 14 B. 441, 3 P. L. J. 419; 105 Ind Cas. 657; 28 Cr. L. J 945; 35 C 363; 20A. 459 The opinions and impressions of witnesses except what they actually saw and heard what the mob was doing and saying, are not admissible in evidence. 105 Ind. Cas. 234.

142. Whoever, being aware of facts which render any assembly, an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Being member of unlawful assembly.

Notes.—The essence of an offence defined in s. 141 is the common unlawful purpose and an accused person can not be convicted if the common object proved is different from the common object in the charge or for which he has been tried. Persons to be tried jointly for an offence under s. 142, must have been associated from the first in the series of acts which form the same transaction. 11 Cr. L. J. 30-4 Ind. Cas 700-6 M. L. T. 17, see also 5 C. W. N. 31, 15 C. 388 This section has no application where a person goes to a place where members of the unlawful assembly have gathered to protect their own right 19 W. R. Cr. 66.

143 Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both.

Punishment.

Elements of conviction.—Where there is no evidence that any of the accused entered into or upon the property with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, he cannot be convicted of an offence under this section A. W. N. 1886, 254 When one of the parties entitled to joint possession is out of possession, he has no right under the law to attempt to take joint forcible possession 11 C. W. N. 176=5 Cr. L. J. 19, see also 25 M. 624=1 Weir 65=12 M. L. J. 403. To convict a person under this section the common object as mentioned in s. 141 must be proved 9 W. R. Cr. 19; 23 W. R. Cr. 73, 100 Ind. Cas. 817=28 Cr. L. J. 337=A. J. R. 1927 Oudh. 151, 46 M. 257=71 Ind. Cas. 242=24 Cr. L. J. 114. Persons by simply passing close to the village of their enemies cannot be convicted under this section 7 P. W. R. 1912 Cr.=67 P. L. R. 1912=15 Ind. Cas. 316=13 Cr. L. J. 476 In cases of rioting, the common object should be stated in the charge. 13 Cr. L. J. 218=39 C. 781=14 Ind. Cas. 314 Under certain circumstances common object may be presumed. 2 L. W. 185=1915 M. W. N. 203=16 Cr. L. J. 176=27 Ind. Cas. 560. No offence is made out when the accused acted in bona fide belief in the existence of right to land and in assertion of such right. 18 C. W. N. 1245=15 Cr. L. J. 725=26 Ind. Cas. 173.

Procedure—Cognizable—Sammons—Bailable—Not compoundable—Triable by any Magistrate, and may be tried summarily.

Charge—I (name and office of Magistrate, etc.,) hereby charge you (name of accused) as follows—

That you on or about the day of at a number of an unlawful assembly, the common object of which (

the object or common object) and thereby committed an offence punishable under s. 143 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the, said charge.

144. Whoever, being armed with any deadly weapon, or with anything which, used as weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Notes—An offence under s. 144 is not one of which actual theft is a necessary ingredient. Therefore separate convictions for an offence under s. 144 and for theft could be awarded. 8 C. W. N. 519 = 1 Cr. L. J. 449. Where a person instigates another to join an unlawful assembly, and joins it himself, he is liable to be read with s. 114, even if the offence is not punishable under s. 144. 5 C. W. N. 250..

Procedure—Cognizable—Warrant—Bailable—Not Compoundable—Triable by any Magistrate.

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows:—

That you, on or about the _____ day of _____ at _____, being armed with a deadly weapon, which used as a weapon of offence punishable under s. 144, were a member of an unlawful assembly, within my cognizance.

And I hereby direct that you be tried on the said charge.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Notes—If the offender still resolves, in defiance of this warning, to persist in the commission of an offence, he aggravates his crime and incurs a more severe punishment—*Morgan and Macpherson*.

Procedure.—Cognizable—Warrant—Bailable—Not Compoundable—Triable by any Magistrate.

Charge—I (name and office of Magistrate etc.) hereby charge you (name of accused) as follows:—

That you on or about the day of , at , joined (or continued in) an unlawful assembly, knowing that such assembly had been commanded in the manner prescribed by law to disperse, and thereby committed an offence punishable under s. 145 of the Indian Penal Code, and within my cognizance

And I hereby direct that you be tried on the said charge.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Notes—The unlawful assembly having moved towards the execution of its common object, and having used force, has committed the higher offence of rioting. It will be noticed that the actual use of force, and not merely a show of force, is necessary, and that the force must be in prosecution of the common object. And in this case whether only one, or more than one, of the persons assembled use the force, the penal consequences apply equally to all. It will be otherwise, however, if the force or violence is used for a distinct purpose,—as if it consists of a mere affray or assault upon each other, or upon bystanders, by some members of the assembly. *Morgan and Macpherson*. Violence cannot mean violence against inanimate object. 40 C 362, see also 44 M. L. J. 407 = 23 Cr. L. J. 350 = A. I. R. (1923) Mad 603. The words "use force" in the present section, it seems, must be construed without reference to the explanation given in s. 349.—*Morgan and Macpherson*.

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Notes. The offence of rioting is a matter that can be constructively made specially necessary to set out in the charge the common object of the assembly. 53 Ind. Cas. 488. See also, 1 Pat. L. T. 623, 25 Cr. L. J. 1169, 3 C. W. N. 605.

It is not necessary for the purpose of s. 146 that force or violence referred to in the section should be directed against any particular person or object. 21 O. C. 134. In the absence of a finding as to the existence of an unlawful assembly a conviction under this section cannot be maintained. 1 Pat. L. T. 606. See also 14 L. W. 538, 19 A. L. J. 487; 44 M. L. J. 407, 4 Lab. L. J. 448.

Where the existence of an unlawful assembly or its common object was not found as proved by evidence, the accused could not be convicted for having committed an offence under this section. 10 M. L. T. 115=1911, 2 M. W. N. 97=12 Cr. L. J. 496 The use of criminal force is a necessary ingredient in an offence under this section. 12 Cr. L. J. 82=9 Ind. Cas. 455, 1 A. L. J. 602. A member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. 7 A. 414=A. W. N. 1885 106 Separate sentences under s. 147 and under s. 353 should not be passed, when the common object of the unlawful assembly committing the riot was the offence under s. 353. 4 C. W. N. 245, see also 104 Ind. Cas. 454=28 Cr. L. J. 838. Omission to state the common object in a charge under s. 147 I. P. Code, does not vitiate the conviction, if there is evidence on record to show it. 99 Ind. Cas. 235=28 Cr. L. J. 107=A. I. R. 1927 Oudh 85. The prosecution of the "common object" in s. 149 of the Penal Code means something immediately connected with the common object. 10 Cr. L. J. 61=99 Ind. Cas. 93=A. L. J. 602. A person charged for forming an unlawful assembly, and acquitted as their presence proved, the conviction of the assembly is not valid. 10 Cr. L. J. 824=A. I. R. 1926 Lah. 521.

Procedure.—Cognizable—Warrant—Bailable—Not Compoundable—Triable by any Magistrate

Charge.—1 (name and office of Magistrate etc.) here by charge you (name of the accused) as follows :—

That you, on or about the day of at , were a member of an unlawful assembly, and, in prosecution of the common object of such assembly, to wit, , committed the offence of rioting, and that you thereby committed an offence punishable under s. 147 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both,

Lathi.—whether a deadly weapon. Vide 15 A. 19

Scope.—If one of the members of an unlawful assembly is armed with a deadly weapon, the other members of the assembly are liable to be charged under the section. 22 C. L. J. 100. If a person is convicted under s. 148, it must be proved that he was armed with a deadly weapon.

be shown that each individual person charged was himself armed 7 C. W. N. 512. In cases of rioting, the two parties must be separately tried, since each of them constitutes an assembly with a common object quite different from that of the other party. S C. 75 Oudh. The only way in which one person can be made liable for the acts of another is under s. 149. 22 C 276. Where, of the several persons charged with rioting armed with a deadly weapon, only one is proved to have been possessed of a gun, it is illegal to convict others who had no such dangerous weapon of an offence under s. 149 16 Cr L. J. 416-29 Ind Cas. 78. Rioting armed with stout male bamboos is rioting armed with deadly weapons 1 Weir. 70.

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Tenable by Court of Session ———, Presidency Magistrate or Magistrate of the first class.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person, who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Scope—This section is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case under this section, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence was one which the accused knew would be likely to be committed in prosecution of the common object 5 Bom L. R. 1023. The word "knew" indicates a state of mind at the time of the commission of the offence and not knowledge acquired in the light of subsequent events 17 Ind Cas 408. The prosecution of "common object" in section 149 of the Penal Code means something immediately connected with the common object 21 S L R. 159-28 Cr. L. J. 61-99 Ind Cas 93-A. I R 1927 Sind 108. The word "knew" in s. 149 has been advisedly used and cannot be made to bear the sense of "might have known." 27 Cr. L. J. 547-93 Ind Cas. 1043-A I R 1926 Lah 419. Section 149 is wide enough to cover the principle of s. 34 95 Ind Cas 594-27 Cr L. J. 818-27 P L. R. 818. Separate sentences may be passed under s. 147 I P. Code and any other section which becomes applicable to the accused with reference to the terms of s. 149. 97 Ind Cas 804. Where in the course of a free fight between two parties a member of one party struck a blow at a member of the other party which resulted in his death every member of the party is guilty of the offence if the evidence does not disclose the actual person who inflicted the injuries 95 Ind Cas. 766-27 Cr L. J. 846-13 O. L.

not include an offence,
ordinance. 20 L.V.

Procedure—Cognizable or not cognizable according as arrest may be made without warrant for the offence or not—Warrant or summons according as a warrant or summons may issue for the offence—Bailable or not bailable according as the offence is bailable or not—Not compoundable—Triable by the court by which the offence is triable.

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows—

That you , on or about the—day of—at—, were a member of an unlawful assembly, the common object of which was—(specify the object) and that while you were a member of the said unlawful assembly, another member (name the member) of the said assembly, caused (specify the offence) to—, and you 'are' thereby under s. 149 of the Indian Penal Code, guilty of causing the said (offence) an offence punishable under s—of the Indian Penal Code, and within my cognizance (or within the cognizance of the court of session).

And I hereby direct you to be tried by the said court on the said charge.

150. Whoever hires, or engages, or employs, or promotes, or hiring, or conniving at hiring, of persons to join unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person, as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Notes.—"Affrays attended by much violence, and occasionally ending in death, are committed in some parts of India by persons either hired or employed for such work alone, or who are not or may not be ordinarily retainers or labourers in the service of the persons hiring them. The object of this section seems to be to bring within the reach of the law, those who are really the originators and instigators of the offences committed by such persons. The ordinary law of abetment might be sufficient to punish those who, by hiring or engaging others, instigate them to join an unlawful assembly. But if the prime agent keeps aloof, and the work of hiring, although known to him, is left

Burden of proof.—The prosecution should prove that the assembly was in fact likely to cause a disturbance of the public peace. 22 P. R. 1887, Cr.

Scope.—The offence consists not in any unlawful assembly, for there may be none, but in the disobedience to the mandate of the law, which, under the particular circumstances indicated here, has ordered the assembly to disperse. Suppose five or more persons meet together on a lawful occasion a command to them to disperse would not be a lawful command and the offence here contemplated would not be committed. But if the time and place of assembly make it likely that a disturbance of the public peace will be caused, the disobedience to the command to disperse constitutes the offence hereby made punishable. If two persons are quarrelling in a public place, an assembly of five or more, composed of these persons and 101 bystanders, appears one likely not only to cause obstruction, but a disturbance of the public peace; and knowingly to join or continue in such an assembly after the order to disperse, may be an offence—*Morgan and Macpherson*. Playing music before a mosque in defiance of an order to disperse by a Police Sub-Inspector is an offence under this section 22 A L J 1049—1925 All. 105.

Procedure—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate

152. Whoever assaults or threatens to assault, or obstructs, or

attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Scope.—This section contemplates an assault or obstruction to some particular public servant. 19 C. 105 The offence of assault is defined by section 351. Knowledge of the fact that the person obstructed is a public servant although it is not expressed in the definition, no doubt forms part of this offence.—*Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Bailable—Not compoundable—Triable by a Court of Session, Presidency Magistrate and Magistrate of the first class.

such public servant in endeavouring to disperse an unlawful assembly (or to suppress a riot or affray)] [or used (or threatened) or attempted to use criminal force to such public servant)] and thereby committed an offence punishable under s. 152 of the Indian Penal Code and within my cognizance (or cognizance of Court of Session). And I hereby direct that you be tried by the said court on the said charge

153. Whoever maliciously or wantonly, by doing anything which is illegal, gives provocation to any

Wantonly giving provocation, with intent to cause riot—

person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the

offence of rioting be committed in consequence of such provocation, be punished with imprisonment of

either description for a term which may

extend to one year, or with fine, or with both; and if the offence of

rioting be not committed, with imprison-

ment of either description for a term which

if rioting be committed.

if not committed.
may extend to six months, or with fine, or with both

Notes—The mere chance of provocation by an illegal act is sufficient to justify the conviction under this section. This section moreover, requires that the provocation given by the commission of an illegal act must be given maliciously and wantonly. 'Maliciously' implies a sort of general malice 18 B. 758. As regards the meaning of wantonly, vide 29 A 569—A W N 1907. 171—6 Cr. L. J. 14. An offence under this section is not committed when the accused did not act wantonly or maliciously 26 M 554—1 W 260—13 M L J. 171. The offence under this section requires that the offender should do something illegal, by doing which he maliciously or wantonly gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed A W, N. 1886, 23. Killing a cow not in the presence of any Hindu is not an offence under this section. 17 A. L. J 200. Provocation can be given by a writer of a pamphlet 22 Bom L R 166.

Procedure—Cognizable—Warrant—Bailable—Not Compoundable—Triable by any Magis. If rioting is not committed summons should issue instead of warrant

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows—

That you—on or about the—day of—at—, maliciously (or wantonly) by doing an act, which was illegal, gave provocation to—, intending (or knowing it to be likely) that such provocation would cause the offence of rioting to be committed, and thereby committed an offence punishable under s. 153 of the Indian Penal Code, and within my cognizance

And I do hereby direct that you be tried on the said charge.

Burden of proof.—The prosecution should prove that the assembly was in fact likely to cause a disturbance of the public peace. 22 P. R. 1887, Cr.

Scope.—The offence consists not in any unlawful assembly, for there may be none, but in the disobedience to the mandate of the law, which, under the particular circumstances indicated here, has ordered the assembly to disperse. Suppose five or more persons meet together on a lawful occasion a command to them to disperse would not be a lawful command and the offence here contemplated would not be committed. But if the time and place of assembly make it likely that a disturbance of the public peace will be caused, the disobedience to the command to disperse constitutes the offence hereby made punishable. If two persons are quarrelling in a public place, an assembly of five or more, composed of these persons and of bystanders, appears one likely not only to cause obstruction, but a disturbance of the public peace; and knowingly to join or continue in such an assembly after the order to disperse, may be an offence.—*Morgan and Macpherson*. Playing music before a mosque in defiance of an order to disperse by a Police Sub-Inspector is an offence under this section 22 A L J 1049—1925 All. 165.

Procedure—Cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate

152. Whoever assaults or threatens to assault, or obstructs, or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Scope—This section contemplates an assault or obstruction to some particular public servant. 19 C 105 The offence of assault is defined by section 351. Knowledge of the fact that the person obstructed is a public servant although it is not expressed in the definition, no doubt forms part of this offence.—*Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Bailable—Not compoundable—Triable by a Court of Session, Presidency Magistrate and Magistrate of the first class.

to obstruct).....A public servant in the discharge of his duty as

such public servant in endeavouring to disperse an unlawful assembly (or to suppress a riot or affray)] [or used (or threatened) or attempted to use criminal force to such public servant)] and thereby committed an offence punishable under s. 152 of the Indian Penal Code and within my cognizance (or cognizance of Court of Session). And I hereby direct that you be tried by the said court on the said charge

153. Whoever maliciously or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both

Wantonly giving provocation, with intent to cause riot—
if rioting be committed.
if not committed.

Notes—The mere chance of provocation by an illegal act is sufficient to justify the conviction under this section. This section moreover, requires that the provocation given by the commission of an illegal act must be given maliciously and wantonly. 'Maliciously' implies a sort of general malice 18 B 758. As regards the meaning of wantonly, vide 29 A 569—A W N. 1907. 171=6 Cr. L. J. 14. An offence under this section is not committed when the accused did not act wantonly or maliciously 26 M. 554=1 Weir 260=13 M L J. 171. The offence under this section requires that the offender should do something illegal, by doing which he maliciously or wantonly gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed A. W, N. 1886, 23. Killing a cow not in the presence of any Hindu is not an offence under this section. 17 A L. J. 200. Provocation can be given by a writer of a pamphlet. 22 Bom. L R 166.

Procedure—Cognizable—Warrant—Bailable—Not Compoundable—Triable by any Magis. If rioting is not committed summons should issue instead of warrant

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows.—
That you—on or about the—day of—at—, maliciously (or wantonly) by doing an act, which was illegal, gave provocation to—, intending (or knowing it to be likely) that such provocation would cause the offence of rioting to be committed, and thereby committed an offence punishable under s. 153 of the Indian Penal Code, and within my cognizance
And I do hereby direct that you be tried on the said charge.

153A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise,

Promoting enmity between classes.

promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years, or with fine or with both.

Explanation—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

Amendment—This section has been inserted by Act 4 of 1894.

Notes—No subject of the Crown is entitled to write any thing exciting the feeling of one class of His Majesty's subjects against another class. 10 Bom L R 848 The Hindu Pandit who had ridiculed the Prophet Muhammad in his book has committed an offence under this section. 25 A. L. J 846=104 Ind Cas. 225=28 Cr. L J 785=A I R 1927 All 649 (S B), but see 103 Ind Cas 769=28 Cr L J 721=A I R. 1927 Lah 590. It is settled law that this section does not mean that any person

who has a tendency to promote class hatred can be

R 497=104 Ind Cas 234=28

in the absence of proof of malice safely inferred. 31 C. W. N.

=45 C L J. 432=A I. R 1927 Cal.

and a tendency to promote public

malice

in the

promoting

hatred. *Held*, that reading the article as a whole there were not sufficient

rate that there was

ve the benefit of the

as 225=28 Cr L. J.

897=A. I. R. 1927 Cal. 141. *Malicious intention* is an element

of the offence. 93 Ind Cas. 1052=27 P. L. R. 207=27 Cr. L J 556 (2)

it excluded, the

30 C. W. N.

4.

able—Not com-

poundable—liable by a Magistrate of 1st class.

Charge—I (name and office of Magistrate, etc.) hereby charge you

(name of the accused) as follows:—

That you, on or about the—day of—, at—, by speaking (or writing)

the words—(or by signs, or visible representations), promoted (or attempt-

ted to promote) feelings of enmity (or hatred) between (*specify the classes*) of His Majesty's subjects and thereby committed an offence punishable under s. 153 A of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the same

154 Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

and do not in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Object.—The object of the section is to impress upon the land owners their responsibilities and obligations in respect of riots or unlawful assemblies committed under the circumstances mentioned in the section. 7 C W N 245.

Facts to be proved.—To sustain a conviction under this section the facts must be proved —(1) That the riot took place on the land belonging to the accused ; (2) that he, knowing that such offence is being or has been committed or having reason to believe that it is likely to be committed,

of
tha
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he did not use all lawful means in his power to disperse or suppress the riot or unlawful assembly. 3 Cr. L J 27.

Knowledge of owner—Knowledge on the part of the owner or occupier of the land of the acts or intentions of the agent is not an essential element of an offence under this section and he may be convicted under the section, though he may be in entire ignorance of the acts of his agent or manager. 28 C 504. But a non-resident partner or co-sharer cannot be convicted in addition to the resident sharer under ss 154, 155, —7 C 1 R 289, 39 C L J 236

Many duties of police are by law imposed on landholders. The presumption that, in addition to his ordinary duties, a landholder is cognizant in a peculiar manner of the proceedings on his land, and is able to prevent and to disperse and to punish the misconduct of his local agents. The difficulty of proving the complicity of land holders and others in affrays and outrages connected with the occupation of land, committed by hired agents, probably rendered necessary the introduction into the code of the four following sections. It will be noticed that circumstances which are in truth only evidence (as reasonable grounds for presuming a guilty knowledge or connivance) of an offence, become in these sections part of the definition of an offence—*Morgan and Macpherson*.

Procedure—Not cognizable—Summons—Bailable—Not—Compoundable—Triable by Presidency Magistrate or Magistrate of the First-class.

Charge.—I (name and office of Magistrate etc) hereby charge you (name of the accused) as follows—

That, on or about the day of , at—, an unlawful assembly was held (or a riot was committed) upon certain land, situated at , belonging to (or in the occupation of) you, and that you (or C D. your agent or manager) well knowing that the said unlawful assembly was being held on the said land, did not give the earliest information thereof in your power to the nearest police station, to wit , by all possible means in your (or his) power to prevent the holding of the assembly; and that you thereby contravened s. 154 of the Indian Penal Code.

And I do hereby direct that you be tried on the said charge

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of person for whose benefit a riot is committed.

such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such

assembly or riot from taking place, and for suppressing and dispersing the same

Absentee co-owner.—An absentee co-sharer who takes an active part in the management of the property, is not liable to be convicted under this section when there are other co-sharers. 8. C. W. N 908.

Person not having property in land nor claiming interest therein is not liable. 17 C. W. N 1247—15 Cr. L. J. 191—22 Ind Cas. 767. A landlord is not liable for sudden unpremeditated riot 3 W. R. 54.

Procedure.—Not cognizable—Warrant—Bailable—Not-Compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class and may be tried summarily.

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows—

That, on or about the day of , at a riot was committed for your benefit (or on behalf of you) upon certain land, to wit , belonging to (or in the occupation of) you [or in which you claim an interest] etc., and that you (or C D your agent or manager) well knowing that the riot would be committed on the said land, did not use all the lawful means in your (or his) power to prevent the said riot etc

Principle—The principle on which this and the following section proceed is to subject to fine, all persons in whose interest an affray is committed and the agents of such persons, unless it can be shewn that they did what they lawfully could do to prevent the offence. The subject of dispute whether land, water, fisheries, crops or other produce of land, markets, etc., or the right to use land, etc., must be one which the person charged under this section either owns, or occupies, or lays claim to, whether he has any lawful interest therein or not. To support the charge there must be proof of the riot, and of those circumstances which lead to the inference that it was committed in the interest (and therefore presumably, at the instigation) of the person charged. It is also essential to establish by direct, or presumptive proof a knowledge or reason for belief that the offence would probably be committed. Usually, where the means of knowing are shown to exist, it will not be unreasonable to presume knowledge.

As to the proof of the matters mentioned, in the latter part of the section "the use of all lawful means of prevention," etc., it is to be observed that in general the law supposes that every person acts legally, and does what he is required by law to do. If therefore a man is charged with omitting to do what the law enjoins, he who brings the charge

in order to exempt himself from liability to fine under this section.

The amount of fine to which the offender is, under this section, liable is unlimited. It will be borne in mind that in such cases, it is provided that the sum to which a fine may extend shall not be excessive (section 63)—*Morgan and Macpherson*.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or is the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of agent of owner or occupier for whose benefit a riot is committed.

the agent or manager, of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

Notes.—Vide to C. 338.

Scope.—See the note to the preceding section. The agent or manager is here made punishable by fine under the like circumstances. The amount of fine is here also unlimited. These two sections contain the only instances throughout the Code in which fine unlimited is the sole punishment—*Morgan and Macpherson*.

Procedure—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the 1st and 2nd class.

Charge.—Vide S. 155

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months or with fine, or with both.

Scope—The mere collection and harbouring of any number, however, small, of persons of the class there referred to, subjects the person harbouring them, to punishment, if he knows the business for which they are, or are about to be, engaged. There must be proof that the persons harboured are employed, or about to be employed, for the

purpose mentioned, and that they are received in some place of reception, (whether a house, out house or other place) in the possession or charge of the accused person, or under his control;—as if he directs, or permits, his servants etc., to receive them into their houses. A knowledge of the purpose for which the persons are or are about to be employed, must also be shown either by direct proof or otherwise. The mere fact of harbouring such persons, connected with circumstances shewing that some right concerning adjacent land etc., is in violent dispute, would probably be sufficient presumptive evidence—*Morgan and Mocherson*

Notes.—Vide 8 Ind. Cas. 880—9 M. L. T. 167—11 Cr. L. J. 757; 6 C. W. N. 143, 7 C. L. J. 280, 29 C. 314.

Procedure—Cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st and 2nd class

Charge—1 (*name and office of Magistrate etc.*), hereby charge you (*name of the accused*) as follows.—

That you ..., on or about the ... day of .., at .., harboured [received or assembled] in the house (or premises) situated at .. in your occupation or charge or control] one X-Y knowing that he has been hired (engaged or employed or is about to be hired, engaged or employed) to join (or become member of) an unlawful assembly, and that you thereby committed an offence under section 157 of the Indian Penal Code and under my cognizance. And I hereby direct that you be tried on the said charge.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both. ;

and whoever, being so engaged or hired as aforesaid, goes or to go armed armed, or engages or offers to go armed, with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Procedure—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class. If the offence falls under the second part instead of summons warrant will be issued.

Charge.—1 (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows.—

That you ..., on or about the ... day of .., at, were

Procedure—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate also triable summarily.

Charge.—I (*name and office of Magistrate, etc.*) thereby charge you (*name of accused*) as follows.—

That you—on or about the—day of—at—, committed the offence of affray, by fighting with each other (or with—) in—which is a public place and disturbed the public peace, and thereby committed an offence punishable under s 160 of the Indian Penal Code, and within my cognizance

And I hereby direct that you be tried on the said charge.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161. Whoever, being or expecting to be a public servant, Public servant taking gratification other than legal remuneration in respect of an official act accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing, or forbearing to do any official act, or for showing, or forbearing to show, in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations—"Expecting to be a public servant."—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification"—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration"—The words "legal remuneration", not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by Government which he serves to accept

"A motive or reward for doing" - A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(a) A, a munsiff, obtains, from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section

(b) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or performing any particular service to that Power with the British Government. That A accepted the sum as a motive or reward for favour in the exercise of his official functions, or for committing the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in the section

Scope.—The above section requires proof that an official has obtained as a motive or reward for official conduct an illegal gratification for himself or another. That other may or may not be an official, and, therefore, may be wholly unconnected with the official conduct. The conduct which is contemplated as the consideration for the bribe must be that of the official obtaining it. To obtain a bribe as a motive or reward

for an act, though it may be the performance of the act itself, is essential. But it is essential that the phrase "bribe is given in consideration of an understanding need of an agreement. It may be that the section is not confined to obtaining an act but also to obtaining an illegal gratification for rendering any service."

T. 615-105 Ind. A police officer helped a person to obtain a title. The officer has got a "silver" for not an official act.

The offence is a public offence of an official in the exercise of his official functions.

Section 1467. No favour or consideration for an act or service.

need be shown to a briber as a fact. 27 Bom. L. R. 120=86 Ind. Cas. 72=26 Cr. L. J. 695 For conviction under this section, the illegal gratification must be proved to have been received with one of the intents mentioned in the section 89 Ind Cas 455=26 Cr. L. J. 1367.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by a Court of Session, Presidency Magistrate or Magistrate of the 1st Class

Charge.—I (*name of office of Magistrate, etc*) hereby charge you (*name of the accused*) as follows —

That you—being a public servant in the—Department directly accepted from (*state the name*), a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within my cognizance (or of the Court of Session or High Court),

And I hereby direct that you be tried on the said charge.

N B.—In a charge under this section it must be shown that the accused took the bribe as a motive for doing an official act. 47 M. L. J. 662=1924 M. W. N. 894.

162 Whoever accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act or in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, "or with any member of the Senate of the Allahabad University," or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

Amendment.—The words within quotations have been inserted by Act 18 of 1887.

Notes.—Mot this section.
8 Ind Cas. 668 = Cr. L. J. 696.
Taking gratific or inducin
public servant t R 1918

P W R 1918. J. W. N. 19 J. W. N. 89

Procedure.—Not cognizable—Summons—Bailable—Not com

able—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

Charge.—I (*name and office of Magistrate etc*) hereby charge you (*name of accused*) as follows.—

That you—on or about the—day—at—accepted (obtained or agreed to accept or attempted to obtain) from—, for yourself (or for XY) a gratification of , as a motive (or reward) for inducing by corrupt or illegal means, A B a public servant, to wit—to do or to forbear to do an official act to wit—and thereby committed an offence under section 162 of the Indian Penal Code and within my cognizance (or the cognizance of the Court of session or the High Court.)

And I hereby direct that you be tried by the said court on the said charge.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant Governor, "or with any member of the Senate of the Allahabad University," or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge ; a person who receives pay for arranging and correcting a memorial for the Government from the services and claims of the criminal, who lays before the that the condemnation was unjust, are not within this section, in as much as they do not exercise or profess to exercise personal influence.

Legislative Changes.—The words within quotations have been inserted by Act 18 of 1887.

Proceduro.—Not cognizable—Summons—Bailable—Not compoundable—Presidency Magistrate or Magistrate of 1st Class.

164. Whoever, being a public servant, in respect of whom

Punishment for abetment
by public servant of offences
defined in section 162
or 163

either of the offences defined in the last
two preceding sections is committed, abets
the offence, shall be punished with
imprisonment of either description for a
term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Scope.—The taking of presents by a public servant with a corrupt

Morgan and Macpherson

Procedure.—Not cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows —

That you—being a public servant in the Department of Government abetted the commission of the offence punishable under section 162 (or section 163) by—and thereby committed an offence punishable under s 164 of the Indian Penal Code, and within my cognizance (or the cognizance of the Court of session or of the High Court.)

And I do hereby direct that you be tried on the said charge.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

Public servant obtaining
valuable thing, without
consideration, from person
concerned in proceeding
or business transacted by
such public servant.

from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having

i.e., illegal harm to any person in body, reputation or property, (see section 44). There must be proof of such facts as raise an inference of a wilful disobedience, coupled with the guilty knowledge or intention to injure. A public servant would always be presumed to know the law by which his conduct should be guided. But it would of course be competent to him to show in mitigation or excuse, that he acted in obedience to the orders of his official superiors and without any intent to injure—*Morgan and Macpherson*.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Notes.—37 P. R. 1872, 1 Weir 180, 1 Weir 74, A. I. R. 1926 Oudh 615

Procedure —Not cognizable—Summons—Bailable—Not compoundable—Triable by a Court of Session, Presidency Magistrate or Magistrate of the First class

Charge —I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows —

That you, on or about the day of at being a public servant, to wit and being such public servant, charged with the preparation (or translation) of the document relating to and dated , (framed or translated) the aforesaid document in a manner which you knew (or believed) to be incorrect, intending thereby to cause (or knowing it to be likely that you might thereby cause) injury to and that you thereby committed an offence punishable under s. 167 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried by the said Court on the said charge.

Scope —The intention or knowledge is the essence of the offence. Errors or carelessness or ignorance are not made punishable as offences, even though it be proved, that the preparation, or translation in fact, is incorrect until the contrary intention to

168 Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Notes—The word "trade" in this section does not include lending money at interest. 147 P. L. R. 1903=22 P. R. 1903 Cr., but see (1911) N. L. R. 53. Member of Municipal Committee may be guilty under this section where such lending is prohibited by Municipal Law. 7 N. L. R. 53=10 Ind. Cas. 577=12 Cr. L. J. 281.

Procedure—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the 1st class.

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows—

That you on or about the day of , at being a public servant, to wit , and being as such public servant legally bound, not to engage in trade, did engage in trade, and thereby committed an offence punishable under s. 163 of the Indian Penal Code, and within my cognizance

And I hereby direct that you be tried on the same charge.

Scope—The obligation not to trade to which this section refers, is that which arises from some prohibition which has the force of law, or by which a person is "legally bound" (see section 43). A person engages in trade who habitually buys and sells with a view to profit. The expression, however, may be intended to bear a wider meaning here, and it will be open for the Courts to decide what is included in the term. It is considered inexpedient to permit Government servants to engage in pursuits by which their time and attention would be diverted from their proper duties. Accordingly no officer, so long as he remains in the actual service of the Government, is permitted to acquire and hold lands for agricultural purposes in any part of India, and there may be other similar or more extensive prohibitions binding on all public servants. But disobedience to the orders of Government in this matter is not, it seems, to be accounted an offence punishable by this section. The present provision applies to the punishment of persons who are prohibited by law from engaging in trade. The section can scarcely be deemed to apply where the prohibition is by contract or agreement between the employer and the employed. There should be proof of the particular prohibition which is applicable, and of the trading, that is the buying and selling as a course of business—*Morgan and Macpherson*.

i.e., illegal harm to any person in body, reputation or property, (see section 44). There must be proof of such facts as raise an inference with the guilty knowledge or intention would always be presumed to know should be guided. But it would of course be in mitigation or excuse, that he acted in obedience to the orders of his official superiors and without any intent to injure—*Morgan and Macpherson*.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Notes—37 P. R. 1872, 1 Weir 180; 1 Weir 74, A. I. R. 1926 Oudh 615.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by a Court of Session, Presidency Magistrate or Magistrate of the First class

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows—

That you, on or about the _____ day of _____ at _____ being a public servant, to wit _____ and being such public servant, charged with the preparation (or translation) of the document relating to _____ and dated _____, (framed or translated) the aforesaid document in a manner which you knew (or believed) to be incorrect, intending thereby to cause (or knowing it to be likely that you might thereby cause) injury to _____ and that you thereby committed an offence punishable under s. 167 of the Indian Penal Code, and within my cognizance

And I hereby direct that you be tried by the said Court on the said charge.

Scope—The intention or knowledge is the essence of the offence. Errors or carelessness or ignorance are not made punishable as offences.

168. Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Notes—The money at interest
N L R 53 Me
section where su
53=10 Ind. Cas

Procedure—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the 1st class.

Charge.—I (name and office of Magistrate, etc) hereby charge you (name of the accused) as follows—

That you on or about the day of , at being a public servant, to wit , and being as such public servant legally bound, not to engage in trade, did engage in trade, and thereby committed an offence punishable under s 103 of the Indian Penal Code, and within my cognizance

And I hereby direct that you be tried on the same charge

Scope.—The obligation not to trade to which this section refers, is that which arises from some prohibition which has the force of law, or by, which a person is 'legally bound' (see section 43). A person engages in trade who habitually buys and sells with a view to profit. The expression, however, may be intended to bear a wider meaning here, and it will be open for the Courts to decide what is included in the term. It is considered inexpedient to permit Government servants to engage in pursuits by which their time and attention would be diverted from their proper duties. Accordingly no officer, so long as he remains in the actual service of the Government, is permitted to acquire and hold lands for agricultural purposes in any part of India, and there may be other similar or more extensive prohibitions binding on all public servants. But disobedience to the orders of Government in this matter is not, it seems, to be accounted an offence punishable by this section. The persons who are prohibited scarcely be deemed exempt between the roof of the particular prohibition which is applicable, and of the trading, that is the buying and selling as a course of business—*Morgan and Macpherson*.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property either in his own name, or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both; and the property, if purchased, shall be confiscated

Notes—16 W. R. 52, 8 B. L. R. App. 1.

Scope—Various laws prohibit officers holding sales of property, and persons employed by or subordinate to them, from purchasing directly or indirectly any property at such sales. The precise terms of . . . referred to, for . . . purchasing at . . .

Procedure — Not-cognizable — Summons — Bailable — Not Compoundable — Triable by a Presidency Magistrate or Magistrate of the first class

Charge.—I (name and office of Magistrate etc) hereby charge you (name of accused) as follows —

That you,—on or about the day of at being a public servant, namely in the Department and being legally bound as such public servant, not to purchase (or bid for) property, purchased (or bade) for that property, in your own name [(or in the name of)] (or jointly) (or in shares) with] and thereby committed an offence punishable under s. 169 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine or with both.

Comment—To support a conviction under this section, it is not necessary that the act done or attempted to be done under colour of office should be such an act as might be legally done by the public servant personated. 27A. 294 But mere personation is insufficient to justify conviction under this section. The section further requires that the

offender should be shown to have attempted to do or to have done, in such assumed character, some act under colour of such office. The phrase "an act under colour of such office" points to acts, which could not have been done, without assuming official authority or responsibility, and would not connote acts of a ministerial or mechanical character, which might be done, without requiring the justification of office in the person doing them 9 Bom. L. R. 222 See also 9 Bom. L. R. 706=6 Cr. L. J. 70. A petition writer is not a public servant U. B. R. (1897-1901) Vol I, 265. The above section does not make the act of pretending to hold a particular office as a public servant punishable unless the person in such assumed character does or attempts to do any act under colour of such office. U. B. R. (1892-1896) Vol I, 168.

Procedure:—Cognizable—Warrant—Bailable—Not Compoundable—Triable by any Magistrate.

(Charge.—I, the undersigned officer of the Magistrate, etc.) hereby charge

you, *at—*, knowing that you hold that office as a public servant, (or falsely personated—holding such office, and in such assumed character did (or attempted to do—under colour of such office, and thereby committed an offence punishable under s. 170 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

Scope—There are two distinct offences here punished. A may falsely pretend that he has been appointed Darogah of a certain place in the room of Z, deceased, or he may falsely pretend to be Z, who is the Darogah of that place. In either case, if he does or attempts such an act as that described, he commits an offence. An act is done "under colour" of the office, if it is an act having some relation to the office which he pretends to hold. If it has no relation to the office, as if A, pretending to be a servant of government, to be travelling through a district, obtains money, provisions, etc., the offence may amount to cheating under s. 145, but it is not punishable under the present section.

The offence first described in this clause can, it seems, be committed only where there is in fact such an office in existence. If in consequence of a dispute as to the right to nominate to an office or to remove from an office, it is uncertain who legally fills the office,—a person doing an official act in the assertion of what he honestly believes to be his lawful title to the office, would not be deemed within this section.—*Morgan and Macpherson*.

171 Whoever, not belonging to a certain class of public

servants, wears any garb or carries any token resembling any garb or token used by that class of public servants with the intention that it may be believed, or with

Wearing garb or carrying token used by public servant, with fraudulent intent

the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description, for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both.

Notes.—Where a person was found carrying a police jacket under his arm with the intent that it should be believed that he was a police constable, he may be convicted of an offence under this section U. B. R. 1904; 1st Cr. Penal Code 3=1 Cr. L. J. 554

Scope.—A similar offence, wearing a soldier's dress, is defined and punished by section 140. It will be noticed that the offence is complete, although no act is done or attempted in the assumed official character. The mere circumstance of wearing such a garb or using such a token, with the intention or knowledge supposed, is sufficient.—*Morgan and Macpherson.*

Procedure.—Cognizable—Summons—Bailable — Not-compoundable — Triable by any Magistrate.

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows —

That you — on or about the day of —, at —, not belonging to — class of public servants, wore garb of such a class of public servants to wit — (or carried a token to wit — which is used by — class of public servants) with the intention that it may be believed, (or with the knowledge that it is likely to be believed), that you belong to that class of public servants, and thereby committed an offence punishable under s 121 of the Indian Penal Code and within my cognizance

And I hereby direct that you be tried on the said charge.

CHAPTER IXA.*

OF OFFENCES RELATING TO ELECTIONS.

171A. For the purposes of this chapter—

(a) "Candidate" means a person who has been nominated as a candidate at any election and includes a

Candidate: Electoral right defined. person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

(b, "Electoral right" means the right of a person to stand or not

to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election

Scope.—This chapter "firstly", seeks to make punishable under the ordinary penal law bribery, undue influence and persuasion and certain other malpractices at election not only, to the legislative bodies, but also to membership of public authorities where the law prescribes a method of election and further, to debar persons guilty of such malpractices from holding positions of public responsibility for a specific period. Secondly it proposes to empower the commissioners appointed under the rules to exercise judicial powers of investigation in respect of elections of legislative bodies in India. *Statement of Objects and Reasons.* "It has been suggested in some quarters that this Chapter should be confined to offences committed in connection with elections to legislative bodies constituted under the Government of India Act. After full consideration of the question, we feel there are distinct advantages at the present time when election is to play so important a part in the new public life of India that the public conscience should be markedly drawn to the danger of corrupt practices in relation to the franchise, whether that franchise relates to legislative or other bodies. We felt it is of the greatest importance that this principle of the purity of the franchise should be insisted on in the general criminal law of the country and that it should not be left to local legislatures to deal with the broad principles enacted in this chapter. There will be sufficient scope for these bodies in elaborating and supplementing the law as proposed in the Bill for we recognise that it is by no means exhaustive"—*Report of the Select Committee*

171B (1) Whoever—

- Bribery**
- (1) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
- (2) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery.

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure a gratification shall be deemed to give a gratification

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification and a person who accepts a gratification as a motive for doing what he

does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

Notes—'Bribery' is defined primarily as the giving or acceptance of a gratification either as a motive or as a reward to any person, either to induce him to stand as, or not to stand as, or to withdraw from being, a candidate or to vote or restrain from voting at an election. It also includes offers or agreements to give or offer and attempts to give or offer such gratification. "Gratification" is already restricted to pecuniary.
—Statement of Objects and Reasons of 1920.

171C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1) whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

171D Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name ;

and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Notes—A candidate at a Municipal election was not aware that a voter was falsely personating another. He attested the voting paper but did not profess to do so on his personal knowledge and the voting officer also knew that the candidate was not doing it on his personal knowledge. *Held* that the candidate was not guilty of intentionally aiding the commission of an offence under this section 24 A L. J. 180=94 Ind Cas 897=27 Cr L J. 705=A I. R. 1926 All 237. "The definition of 'personation' closely follows the definition in section 24 of the Ballot Act, 1872, and covers both a person who attempts to vote in another person's name or in a fictitious name, a voter who attempts to vote twice and any person who abets, procures or attempts to procure such voting"—*Statement of Objects and Reasons*.

171E Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both :

Provided that bribery by treating shall be punished with fine only

Explanation—'Treating' means that form of bribery where the gratification consists in food, drink, entertainment or provision.

Vide—26 Cr. L J. 362=47 All 268=84 Ind Cas 714, 26 Cr. L J. 445=85 Ind Cas 61

Procedure—Non-cognizable—Summons—Bailable—Not compoundable—Triable by a Presidency Magistrate or Magistrate of the First class

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows—

That you,——on or about the——day of——, at——, gave a gratification to wit——to——, with the object of inducing him (or any other person) to exercise——electoral right (or of rewarding any person for having exercised any such right) and thereby committed an offence under s 171 E of the Indian Penal Code and within my cognizance etc

171F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Procedure—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the First class.

Charge—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows:—

That you, on or about the _____ day of _____, at _____, voluntarily interfered (or attempted to interfere) with the free exercise of an electoral right to wit _____, and thereby committed an offence punishable under s. 171 F of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

Notes.—Where it was found that the petitioner had intentionally but recklessly abetted the offence of false representation at a municipal election, he could not be convicted under s. 465 of Indian Penal Code. Where there are two provisions, one specific and the other general, the specific provision ought to be applied in preference to the general one 22 A. L. J. 1106. An act, to amount to an attempt, must be such that if not prevented, it would complete the offence. At a municipal election the petitioner went to the officer who had the custody of the signature slips. He did not give out his name but produced a piece of paper which bore a certain number. The officer looked at the number and then at the electoral roll and asked the petitioner if he was *Lachoo* and he said "yes" but the *patwari* who was there pointed out that his name was *Molkhan* which was the truth. Thereupon the petitioner was turned away. *Held*, that the petitioner was not guilty of attempting to commit the offence of fraudulently applying for voting paper and thereby personating at election. 22 A. L. J. 1102. Where a candidate identifies a voter without ascertaining identity of the voter, he is guilty of abetment of personation at election. A. L. R. 1928 All 150.

171G. Whoever with intent to affect the result of an election

False statement in connection with an election. makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by a Presidency Magistrate or Magistrate of the First class.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of the accused*) as follows:—

That you, on or about the—day of—, at—, with intent to affect the result of the election, to wit—, made or published a statement to wit— which statement is false and which you knew (or believed) to be false (or which you did not believe to be true) and thereby committed an offence punishable under section 171 G. of the Indian Penal Code

And I hereby direct you to be tried on the said charge and within my cognizance.

H. Whoever without the general or special authority in writing of a candidate incurs or authorises

Illegal payments in connection with an election.

expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by a Presidency Magistrate or Magistrate of the First Class.

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows—

That you,—on or about the—day of—, at—, without the general (or special) authority in writing of—, a candidate incurred (or authorized) expenses on account of the holding of a public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Penal Code and under my cognizance, etc

171 I. Whoever being required by any law for the time being

Failure to keep election accounts

in force or any rule having the force of law to keep accounts for expenses incurred at or in connection with, an election fails

to keep such accounts shall be punished with fine which may extend to five hundred rupees.

Notes.—“It is also made illegal for any one, unless authorized by a candidate to incur any expenses in connection with the promotion of the candidate's election and if by any law accounts have to be kept, failure to keep such accounts is made penal—*Statement of Objects and Reasons*”

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by a Presidency Magistrate or Magistrate of the First Class.

Charge—I (name and office of Magistrate etc.) hereby charge you (name of the accused) as follows—

That you,—being required by law for the time being in force to wit— (or by any rule having the force of law, to wit—) to keep accounts expenses incurred at (or in connection with) an election to wit—, fail

to keep such accounts and thereby committed an offence punishable under section 171 I. of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons, notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Object—The object of the section is to punish an offender for the contempt his conduct indicates of the authority whose processes he disregards. In order to prove the commission of an offence under this section the existence of a summons, notice or order is necessary. It is ended that a process will be must also be shown that the the process had issued 4 M. cover the absconding from a warrant of arrest. A. I. R. 1928 A. 232.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows—

That you—on or about the—day of—at—, absconded in order to avoid being served with a summons (or notice) (or order) proceeding from—a public servant, and thereby committed an offence under s. 172 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

173. Whoever in any manner intentionally prevents the
 Preventing service of sum- serving on himself, or on any other person,
 mons or other proceeding, of any summons, notice, or order proceed-
 or preventing publication ing from any public servant legally com-
 thereof, petent, as such public servant, to issue
 such summons, notice, or order,

or intentionally prevents the lawful affixing to any place of any,
 such summons, notice, or order,

or intentionally removes any such summons, notice, or order
 from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation,
 under the authority of any public servant legally competent, as such
 public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which
 may extend to one month, or with fine which may extend to five
 hundred rupees, or with both ;

or, if the summons, notice, order, or proclamation, is to attend
 in person or by agent, or to produce a document in a Court of
 Justice, with simple imprisonment for a term which may extend to
 six months, or with fine which may extend to one thousand rupees,
 or with both.

Refusal to sign a summons.—A refusal to receive and sign a
 summons does not constitute a prevention of service within the meaning
 of this section—*Rat Un Cr C. 17, 5 B H C. Cr 34, 3C. 612; 20C.*
356, 24 A. L. J. 216=27 Cr L J 142=91 Ind. Cas 814, 24 A L J.
215=92 Ind Cas 460=27 Cr L J 284, 23 A L J. 148=86 Ind Cas.
973=26 Cr L J 909, 40A 577, 1 Rang. 49, 74 Ind. Cas 65, 21
O. C 150, 1 Weir 79, 31 A 608, 23 A. L J 148=86 Ind. Cas. 973=
26 Cr. L. J 909=1925 All. 322.

Procedure.—Not-cognizable—Summons—Bailable—Not-compound-
 able—Triable by Presidency Magistrate or Magistrate of 1st or 2nd Class.

Charge—I (*name and office of Magistrate etc.*) hereby charge you
 (*name of the accused*) as follows —

That you—on or about the—day of—at—, intentionally prevented the
 serving on yourself (or on any other person), of a summons (or notice)
 (or order) to wit—proceeding from (*name the public servant*) as
 such—, to issue such summons, notice or order, and thereby committed
 an offence punishable under section 173 of the Indian Penal Code, and
 within my cognizance.

And I hereby direct that you be tried on the said charge.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both,

or, if the summons, notice, order, or proclamation, is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a Zillah Judge, as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this section.

Scope.—In order to sustain a conviction under this section, it has to be shown that the summons issued was issued by a public servant legally competent, as such public servant to issue the same, and that the accused intentionally omitted to attend in pursuance of the summons. 12 A. L. J. 680. Section 147 of the U. P. Land Revenue Act when it gives a revenue official exercising fiscal functions authority to issue a citation to a defaulter to appear gives him authority to order that person to appear before him and the person is obliged to appear before him, if so ordered, under the penalties laid down by s. 174. 4 O. W. N. 1211; see also 49 A. 205=99 Ind. Cas. 60=28 Cr. L. J. 28. It is not an offence to comply with a *sub poena* where the place of attendance is not specifically mentioned. 94 Ind. Cas. 889=24 A. L. J. 536=A. I. R. 1926 All 474. A person who does not attend to receive orders under s. 36 of the Legal Practitioners Act cannot be charged, under this section. A. I. R. 1928 Rang 296.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate and triable summarily.

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows :—

That you—on the—day of—, at—, being legally bound to attend in person (or by an agent) at—and at—in obedience to—) proceeding intentionally in that place shalable under

115 whoever, being legally bound to produce or deliver up any document to any public servant as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one

Omission to produce document to public servant by person legally bound to produce it

month, or with fine which may extend to five hundred rupees, or with both ;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Illustration

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section

Notes—Special laws which require the production and delivery of documents, and contain penalties for the omission to produce or other non-compliance with orders relating to them, are not affected by this provision. Previous sanction is absolutely needed to prosecute under this section 12 C W. N 1016, 8 C W N 20. It must be proved that the accused was in possession of the document in question 4 P L W 65. No offence is done under this section, where a person does not produce the original of a document to a Sub-Registrar or a receiver appointed under the Land Registration Act 15 P R 1910. 29 C 236

Procedure—Not—, —Bailable—Not—
com h the offence is committed,
subj , or if not committed in a
Cou , Magistrate, or a Magistrate of the First
or Second Class

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows —

That you on the day of , at , being legally bound to

produce (or deliver up) the document of to as such, intentionally omitted so to produce or deliver up the same to and thereby committed an offence punishable under section 175 of the Indian Penal Code and within my cognisance.

And I hereby direct that you be tried on the said charge

176. Whoever being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both :

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Notes—The mere fact that a landlord is collecting rent in excess of the rent recorded without apprising the revenue officials of the same will not render him liable under this section. 7 L. R. 195 Cr. Omission to give information, when the person is bound to do so is an offence. A. L. R. 1926 Nag 217. This section is applicable only in cases of intentional omission. 5 P. R. 1889, 16 W. R. 35, 18 W. R. 22 A.

Procedure—Not-cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z a wealthy merchant residing in a neighbouring place, and being bound, under cl 5, s 7 Reg 111, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Explanation.—In section 176 and in this section the word "offence" includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460, and the word "offender" includes any person who is alleged to have been guilty of any such act.

Scope.—To come within the provisions of this section, the accused must be shown to be legally bound to furnish information, and to have furnished false information. 1 Weir 106. In order to justify a conviction under this section, it is not necessary to prove an intention to defraud. It is enough to show that the information furnished as true was either known to be false or not believed to be true. 1 Weir 107. This section embraces every case in which a subordinate seeks to impose false information upon his superior. 6 M H C App 48. The first part of the section deals with a simple case of a person who being bound to furnish true information to a public servant furnishes a false information to him. Under the second part of the section, the information which a person is bound to furnish is not true.

Legislative change.—This Explanation has been added by the Indian Criminal Law Amendment Act (III of 1894) s 5.

180. Whoever refuses to sign any statement made by him,

Refusing to sign state-
ment.

when required to sign that statement
by a public servant legally competent
to require that he shall sign that statement,

shall be punished with simple imprisonment for a term which
may extend to three months, or with fine which may extend to
five hundred rupees, or with both.

Notes—A refusal to sign a statement under s 364 of Cr. Pro Code
is an offence 39 A 399 An accused is bound to sign a deposition if
it is read over to him 1881 A W. N 43 A deposition in a Revenue
inquiry need not be signed. 1 Weir 112, see also 4 B. 15, 3 L B R.
199, 8 P. R 1912.

Procedure—Not cognizable—Summons—Bailable—Not
compoundable—Triable by the Court in which the offence is commit-
ted subject to the provisions of Ch. XXXV, or if not committed, in a
Court, triable by a Presidency Magistrate or Magistrate of the 1st or 2nd
class.

181. Whoever, being legally bound by an oath "or affirma-

tion" to state the truth on any subject
to any public servant or other person
authorized by law to administer such
oath "or affirmation," makes to such
public servant or other person as aforesaid,
touching that subject, any statement which

False statement on oath
or affirmation to public
servant or person autho-
rized to administer an oath
or affirmation,

is false, and which he either knows or believes to be false, or does
not believe to be true, shall be punished with imprisonment of
either description for a term which may extend to three years,
and shall also be liable to fine.

Punishment—A sentence under this section must award a term of
imprisonment 4 M. H. C. App. 18.

Notes—This section has application only in cases where the proceed-
ing is other than judicial. 2 M. H. C 538, 7 W R 68, 8 W R. 24,
8 B H. C. Cr. 21, but see 1 Weir 115. All that is required is that the
person must be authorised to administer oath or solemn affirmation.
6 W R 81, 5 A 17; 5 M H C 326, see also 2 M. H. C R 438.
6 M. 252, 12 M, 451.

Procedure—Not-cognizable—Warrant—Bailable—Not
compoundable—Triable by a Court of Session, Presidency Magistrate
or Magistrate of the 1st class

Charge—I (name and office of Magistrate etc.) hereby charge you
(name of accused) as follows—

That you on or about the day of , at , being legally

bound by an oath (or affirmation) to state the truth, on a certain subject, to wit , to a public servant [or person authorised by law to administer such oath (or affirmation)] did make to such ———touching the aforesaid subject a statement to wit which was false, [or which you knew (or believed) to be false] [or which you did not believe to be true] and thereby committed an offence punishable under s. 181 of the Indian Penal Code and within my cognizance (or cognizance of the Court of Session or High Court)]

And I hereby direct that you be tried by the said Court on the said charge.

False information with intent to cause public servant to use his lawful power to the injury of another person

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Illustrations

(a) A informs a Magistrate that Z a police officer

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that, in consequence of this information, the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section

Legislative changes.—This section has been substituted by Act 3 of 1895.

Scope.—This section makes the giving of false information to a public servant penal, when either of the two consequences is intended to be caused or is known to be likely to be caused by the false information, the first being the causing "the public servant to use the lawful power of such public servant to the injury or annoyance of any person" and the second "to do or omit anything which such if the true state of facts respecting known to him." The second part without importing into it the words "to the injury or annoyance of any person." It is sufficient if the public servant does or omits anything which he ought not to do or omit, if the true state of facts were known to him. As a public servant is bound to act in the discharge of his duty properly it may often be interference with his duty, and thus dangerous to the public welfare, if through false information he is prevented from acting, or induced to act wrongly. 13B. 506 In order to support a conviction under this section, the information given should have been information which the informer knew or believed to be false, and it should have been proved that he gave it with such knowledge. 9 W R Cr 31 See also 31B 204; 15 Bom L R. 574; 15 Cr. L. J 672 The expression "give information" in this section should not be interpreted as meaning volunteering information, but is intended to apply to a statement made in answer to a question put by a public servant. 104 Ind Cas. 712=28 Cr L. J 872. This section deals with giving information to a public servant as opposed to lodging a complaint in Court and requires that the information given by the accused should not only be false in fact but it must be false to the knowledge or belief of the informant 19 S L R. 91 For a conviction under this section it is not necessary that the false report must be taken down from dictation 3 O W. N. 96 (Sup.)=95 Ind Cas. 598=27 Cr L. J. 822 The word "give" in this section does not bear the restricted meaning of "volunteer" 26 Cr. L. J. 1532=90 Ind Cas 316=A. I R 1925 Rang. 364 "Gives information" in this section does not necessarily mean "volunteers" information. A. I. R 1929 p 4, see also A. I. R. 1928 p. 56 Inability to substantiate a claim is not an offence under this section A. I. R. 1928 Pat. 574.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st or 2nd Class.

Charge—I (name and office of Magistrate) hereby charge you (name of the accused) as follows—

That you—on or about the—day of—, at—, gave to—a public servant, a certain informant—, information—, with intent—, to cause—, the lawful power of such—to the injury (or annoyance) of—} and thereby

committed an offence punishable under s. 182 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Soope.—Resistance to the taking is punishable when the taking is by lawful authority. *Morgan and Macpherson*, Resistance to a distraint which is not issued *bona-fide* is not an offence 1 Weir 126 Refusal to give up property along with threatening to do harm is resistance under this section 6 Bom L. R. 254. But mere refusal is not Rat Un. Cr. C. 412; see also 15 B 564 Resistance of seizure of goods in execution of a decree against a deceased debtor is an offence under this section. 21 M. 78. Resistance to an expired distress warrant is punishable 10 C. 18; 1 Weir 134, see also 49 P R 1905. So also where there is no warrant. 27 A. 285.

Procedure.—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by a Presidency Magistrate or Magistrate of 1st or 2nd Class.

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows:—

That you—on or about the—day of—at—offered resistance to the taking of property by the lawful authority of—a public servant, knowing public servant and thereby the Indian Penal Code and

And I hereby direct that you be tried on the said charge

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Notes.—Notices, etc., such as are sometimes given at public sales by persons having, or claiming in good faith to have, a right or interest in the property to be sold, would not be deemed obstructions. But such notices if clearly not *bona fide*, and merely for the purpose of injuring the sale, might be so. *Morgan and Macpherson*. To constitute an offence

under this section, the sale must be by the authority of a public servant. 27 A 480 Obstruction means physical obstruction. 2 Cr. L. J. 44; see also 1883 A. W. N. 197.

Procedure—Not-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd Class.

185. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

Notes.—Both corporeal and incorporeal property are contemplated by this section 3 W R. 33, see also. 37A 128—13 A. L. J 109.

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first class

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Comment.—To constitute an offence under this section, the obstruction must be intentional and it must be direct U B. R. (1897-1901) Vol. I. 266 To support a conviction under this section it is requisite to prove that the public servant was obstructed in the discharge of his public functions 15 Bom L. R 315. There must be actual obstruction and not a mere withholding of assistance or inciting of others to withhold assistance. 6 C P L. R Cr 5 This section does not cover the case of a public servant who is acting wholly out side his jurisdiction 51B. 896—29 Bom L. R 987—103 Ind Cas 593—28 Cr L. J 705 Resistance to execution under a time-barred warrant is not an offence 99 Ind. Cas. 413—28 Cr L. J 157 If a person escapes from custody of process-server after arrest and shuts himself up in a room and refuses to come out he is not guilty under this section 9 Lah L. J. 408—103 Ind. Cas. 833—28 Cr. L. J 753 Where a writ of attachment is without seal of Court resistance to attachment by judgment debtor is not an offence

under this section. 7 Pat. L. T. 30-93 Ind. Cas. 146-27 Cr. L. J. 418-A. I. R. 1926 Pat. 237 The use of the word "voluntarily" in this section indicates the commission of some overt act of obstruction and does not render mere passive conduct penal. Refusing to open a closed door does not amount to voluntary obstruction. The public

intended to cover any self to perform even if

's duties. 25 Cr. L. J.

1 of a patwari to allow

act of insubordination

ider s. 186 can not be

A I R. 1925 All. 409;

see also 47 A. 579-23 A. L. J. 352-87 Ind. Cas. 514-26 Cr. L. J. 978-A. I. R. 1925 All. 401. Obstruction implies criminal force and as such mere threatening language is not sufficient. A. I. R. 1928 Lah. 827. Physical obstruction to a person acting under the direction of a public servant present at the time is an offence under this section. A. I. R. 1928 B. 135.

Procedure—Not-cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first or second Class.

187. Whoever, being bound by law to render or furnish

Omission to assist public servant when bound by law to give assistance. assistance in any public servant in the execution of his public duty, intentionally omits to give such assistance,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

and, if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Scope.—This section and section 188, apply to direct refusal or omission of a person bound by law to render or furnish assistance to a public servant in the execution of his public duty. 7 C. L. R. 575. The word "assistance" referred to in the first part of this section, is *ejusdem generis* with the various forms of assistance specified in the latter half of the section. The assistance must have some direct

personal relation to the execution of the duty by the public officer. 26 M. 419 (F. B.) ; see also 38 M. L. J. 27—1920 M. W. N. 110 Where a person is not legally bound to render assistance no offence is committed. 42 A. 314 ; 6 C. P. L. R. 5 ; 22 B. 769 ; 3 A. 201.

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

and, if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger or riot. A has committed the offence defined in this section.

Soope.—To justify a conviction under this section, it is necessary to establish that the disobedience “causes, or tends to cause, obstruction, annoyance, or injury to any person lawfully employed, and to make the offence graver, it must be established that such disobedience

causes, or tends to cause danger to human, life, health or safety ; or causes or tends to cause a riot or affray " A W N. 1886, 251. In order to constitute an offence under this section it is necessary to show, *first*, a lawful order promulgated by a public servant, *secondly*, a knowledge of the order and disobedience of it, and *thirdly*, the result that is likely to follow such disobedience. 4 C W N 226 To sustain a conviction under this section, it is essential that there should be evidence to show that the disobedience would produce one of the consequences specified in the section. Rat Un Cr C 433, 1 Weir 137, 31 C 990. It is not sufficient in order to affect a person with the knowledge of an order under s. 144 Cr. P. Code, and to render him liable to conviction under section 188 I. P. Code, to show that the order had been duly promulgated. 31 C. W. N. 340=45 C L J 202=100 Ind Cas 830=28 Cr L. J. 350, see also 44 C L J 450. "To be legally empowered" is different from "to be justified" 47 A 205=85 Ind Cas 823=26 Cr L J 599 "Promulgate" indicates some form of publication—*Ibid*, Sale of *arrack* in contravention of an order promulgated by the District Collector is not punishable under this section in absence of proof of causing or a tending to cause obstruction, annoyance or injury to any one. 22 L W 98=26 Cr. L J 1556=48 M L J 605=A. I. R 1925 Mad 856. Disobedience of order without proof of annoyance etc., is not an offence under this section A. I. R. 1928 Mad, 591

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Charge.—1 (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows —

That you,—on or about the—day of—at—knowing that by an order, to wit—promulgated by a public servant lawfully empowered to promulgate such order, you are directed, to abstain from———(state the name of the act) or to take certain order to wit—with certain property, to wit—, in your possession (or under your management) disobeyed such direction, and thereby committed an offence punishable under section 188 of the Indian Penal Code, and within my cognizance

And I hereby direct that you be tried on the said charge.

189. Whoever holds out any threat of injury to any public

Threat of injury to public servant. servant, or in any person in whom he believes that public servant to be interested, for the purpose of inducing

that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Gist of offence.—In order to sustain a conviction under this section there must be a threat of injury to either the public servant or to any one in whom the accused believes that public servant to be interested. What the section deals with are menaces which would have a tendency to induce the public servant to alter his actions because of some possible injury to himself or to some one in whom the accused believes he has an interest. *But. H. Cr. C. 277, see also 8 M. L. J. 505=39 M. 561.*

that the actual v
should be mention

in fact, a threat of injury to the public servant was really made by the accused. 8 A. 380.

Injury under this section implies an illegal harm. 27 P. L. R. 87=6 Lah. 558=93 Ind. Cas. 48=1926 Lah. 139

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the First or Second Class.

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered, as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Notes—A notice of intention to file civil suit for a declaration of right against a person does not amount to holding out threat or injury. 92 Ind. Cas. 163=24 A. L. J. 314=27 Cr. L. J. 357. But excommunication for instituting a civil suit falls under this section. 8 M. 140

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by a Presidency Magistrate or Magistrate of the first or second Class.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Scope.—Many things which interfere with the administration of justice are made punishable in the preceding chapter. This chapter is intended to provide, for certain offences of that description which either do not properly fall within other chapter or which calls for more severe punishment because committed in order to obstruct public justice. It includes false evidence, and certain other offences against justice—*Morgan and Macpherson*.

191. Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person uttering it is within the meaning of this section and a person may believe a thing that he knows a

Illustrations.

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false and, therefore, gives false evidence.

(c) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false and, therefore, gives false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(c) A, an interpreter or translator, gives, or certifies, as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be, a true interpretation or translation. A has given false evidence.

Scope—The words in section 191 are very general and do not contain any limitation that the statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case under this section, if the

say, if the person making it to be false, and with the it to suppose that what he states is true 26 A. 509. A person can be convicted if he has made a false statement in an affidavit. 99 Ind. Cas. 341=28 Cr. L. J. 133. No offence under this section is committed by false statement in an application for substitution 102 Ind. Cas. 214=28 Cr. L. J. 518=6 Pat. 184. The authors of the Code thought it inexpedient to use the technical terms of the English Law where they did not adopt its definitions and materially departed from it in substance. The offence of attempting to induce a Court of Justice by the word "per Regulations For 1

scope than that which is to be found in the English law, or the Regulations—*Morgan and Macpherson*

Where a witness misreads a document for the information of the Magistrate an offence under this section is not committed 9 C. P. L. R. Cr. 5. A false answer to a police enquiry is an offence under this section 8 C. L. R. 236. But the making of a false balance sheet is not an offence. 16 A. 88=A. W. N. 1894, 23. A false statement recorded under s. 161, Cr. Pro. Code, 1882, is an offence under this section 7 P. R. 1896 Cr.

The practice of charging a man with making two mutually contradictory statements may be convenient, but it can only be successfully used where the two statements are necessarily and irreconcilably contradictory. 1915 M. W. N. 34=16 Cr. L. J. 14=26 Ind. Cas. 318.

To justify a conviction of perjury, it is not necessary to prove that the statement of the party accused is impossible, and it is certainly sufficient to prove it incredible. 22 O. C. 230=54 Ind. Cas. 60.

It is open to a witness to correct himself on second thought or on being reminded of any fact which might have escaped his memory. 25 O. C. 139=23 Cr. L. J. 652=69 Ind. Cas. 92.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement

may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who, in such proceeding, to entertain an opinion touching some material point in the case, to the result of such

Illustrations.

(a) A, puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence

(b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c) A with the intention of causing Z to be convicted of a criminal conspiracy writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence

Comment.—To constitute an offence under this section, it is necessary to prove that it was intended

pinion touching some material point in the case. 1 Weir 175. It is intention that creates the criminal offence and not the fact as to whether, under the terms of the law, the document is admissible in evidence. 16 Cr. L. J. 620 But in a recent Punjab case a contrary view was taken, vide 1 P. R. 1914 Cr. 11. It is not necessary to prove that the person who fabricated the evidence intended to cause any person to entertain an opinion touching some material point in the case. 28 Cr. L. J. 950 = A. I. R. 1921 An 721. 35. 662 =

28 Cr. L. J. 950 = A. I. R. 1921 An 721.

The framers of the Code, the compilers of

however, that in this country the practice is exceedingly common, and for obvious reasons. The mere assertion of a witness commands far less

respect in India than in Europe, or in the United States of America. In countries in which the standard of evidence is perhaps overrated by the great majority of the population, it is generally considered as the best. But in India we have reason to believe that the case is different. A Judge, after he has heard a transaction related in the same manner by several persons who declare themselves to be eye-witnesses of it, and of whom he knows no harm, often feels a considerable doubt whether the whole from beginning to end be not a fiction, and is glad to meet with some circumstance, however slight, which supports the story, and which is not likely to have been devised for the purpose of supporting the story. Hence, in England a person who wishes to impose on a Court of Justice knows that he is likely to succeed best by perjury, or subornation of perjury. But in India, where a Judge is generally on his guard against direct evidence, a more artful mode of imposition is frequently employed. A lie is often conveyed to a Court, not by means of witnesses, but by means of circumstances, precisely because circumstances are less likely to lie than witnesses. These two modes of imposing on the tribunals appear to us to be equally wicked, and equally mischievous. It will indeed be harder to bring home to an offender the fabricating of false evidence than the giving of false evidence. But wherever the former offence is brought home, we would punish it as severely as the latter. If a puts a purse in Z's bag with the intention of causing Z to be convicted as a thief, we would deal with A as if he had sworn that he saw Z take a purse. If A conceals in Z's house a paper written in imitation of Z's hand, and purporting to be a plan of a treasonable conspiracy, we would deal with A as if he had sworn that he was present at a meeting of conspirators at which Z presided" — *Morgan and Macphersons*

To constitute an offence under this section, it is necessary to prove that it was intended that the false circumstances should appear in evidence in a judicial proceeding, that is, should appear as part of the evidence on which the judicial officer has to form his judgment, and that the circumstance should be of such a nature as might have caused the judicial officer to entertain an erroneous opinion touching some material point in the case. 1 Weir. 175—5 M. H. C. 373

Execution proceedings are judicial proceedings for the purpose of s. 192 and s. 193 of the Indian Penal Code. 22 Bom. L. R. 1239. It is not essential for the purpose of this section that there should be any judicial proceeding pending at the time of the fabrication. It is enough that there is a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the document in question is intended to be used in such a proceeding. 22 Bom. L. R. 1229

193 Whoever intentionally gives false evidence in any stage

Punishment for false evidence. of a judicial proceeding, or fabricates false evidence for the purpose of being used in

This section makes it imperative upon the Court to pass some sentence

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118=19 Cr. L. J. 141.

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to the deponent, 28 P. R. Cr 1918=39 P. W. R. Cr 1918=47 Ind. Cas. 872=19 Cr. L. J. 972. In a case under this section for perjury where the prosecution is based upon a certain statement being false made by the accused, it is essential to set out the exact statement in detail upon which the prosecution wants to proceed. (1918) Pat 13=4 Pat. L. W. 44=43 Ind. Cas. 585=19 Cr. L. J. 169

Attestation of false report without knowledge of contents is not an offence under this section 17 A L J 574=50 Ind. Cas 28=20 Cr. L. J. 268 Mere witnessing service of summons on a wrong person also does not constitute an offence. 52 Ind. Cas 417=20 Cr. L J 641.

" In a case under this section, it must be proved beyond all reasonable doubt that the particular portion of the statement alleged to have been made by the accused is false 51 Ind Cas 629=20 Cr L J. 519. Where the deposition of a witness is read by him it need not be read over to him 23 C W. N. 661=29 C. L J 513=50 Ind. Cas 660 see also 42 M. 561=36 M. L. J 296=50 Ind. Cas. 987 In case of perjury it is : oath to the accused person like any other fact 50 Ind.

d in the trial of the petitioner
ment in the Munsiff's Court.

It is the duty of the prosecution to prove conclusively that the statement made by the accused was necessarily a false statement, before a conviction can be sustained under this section. 56 Ind Cas 660=21 Cr. L. J. 550

section, where the accused is
except of consideration it is for
tion did pass, and not for the
J. 1151=59 Ind. Cas. 198=22
Cr. L. J. 59.

A statement recorded by a Magistrate in the course of a police investigation under s 164 of the Criminal Procedure Code is not evidence with in s, 193, Expl. 2, I. P. Code. 23 Bom. L. R. 1=45 B. 835=60 Ind. Cas.

593. False answer to a question which is neither relevant nor material is not an offence. 22 Cr. L. J 568=1921 Pat 139=2 Pat. L. T. 380 62 Ind. Cas. 584. In a case under this section it must be proved that the accused made some statement which he knew to be false or which he did not believe to be true 61 Ind. Cas 521=22 Cr. L. J. 393. A person can be charged and convicted for perjury even though his prior deposition has not been taken down in strict compliance with Order 18 Rr, 5 and 6 of C. P. Code.=18 N. L. R. 192=68 Ind. Cas. 36=23 Cr. L. J 500 Where contradictory statements are made before the same person, sanction to prosecute under s 193 I. P. Code should be granted 5 Lah. L. J. 407 No man can be convicted of giving false evidence except on proof of facts which if accepted as true show not merely it is incredible, but that it is impossible that the statements of the accused made on oath can be true. 1 Rang 290=1924 Rang 17. To convict a person of perjury it must be shown that the statements made by the accused are on their face deliberately false or that they are so from extrinsic circumstances 4 Pat L. T. 683=1 Pat. L. R. 142 Cr =72 Ind. Cas. 161=24 Cr L. J 321, see also 1 Pat. L. R. Cr. 17. A witness is not guilty of perjury if he corrects a statement of his, previously made in the same deposition. 11 O L J 309=81 Ind. Cas. 951=25 Cr. L. J 1127=83 Ind. Cas. 490.

Procedure—Not-cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the First class

Charge.—1 (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows —

That you—, on or about the—day of—at—, being summoned as a witness in—being a judicial proceeding then pending before the—and being bound on oath (or a solemn affirmation) to state the truth, intentionally stated in evidence that—which statement you either knew (or believed to be false or did not believe to be true), and thereby committed an offence under s 193 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court)

And I hereby direct that you be tried by the said Court on the said charge

194. Whoever gives or fabricates false evidence, intending

Giving or fabricating false evidence with intent to procure conviction of a capital offence. thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital "by the law of British India or England" shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and

and, if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence, shall be punished either with death or, the punishment hereinbefore described.

Legislative changes—In the section for the words "by the Code or law of England" the words quoted have been substituted by Act 9 of 1890.

Notes—This offence ranks with murder and attempt to murder, according to the result, *Morgan and Macpherson*.

Procedure—Not-cognizable—Warrant—Not Bailable—Not-compoundable—Triable by Court of Session.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence by the law of England, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

Legislative changes—In this section for the words "by the Code of Law of England" the words quoted have been substituted by Act 9 of 1890.

Section—This section and section 196.

false witnesses or attempting to use their evidence. But a mere inciting to give false evidence, or of or an occasion. The word "corruptly," which does not occur in the preceding sections, probably used here to denote that those whose duty it is, not to judge of the credibility of evidence, but to submit it for the consideration

of judicial and other functionaries on behalf of their clients do not incur the penalties of using false evidence—*Morgan and Macpherson*.

Procedure.—Not-cognizable—Warrant—Not-bailable—not-compoundable—Triable by Court of Session.

196. Whoever corruptly uses, or attempts to use as true or genuine evidence, any evidence which Using evidence known to be false, he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Notes.—Under this section, the mere user of false evidence is not sufficient, the user must be corrupt 'Corruptly' is not defined in the Code. The Court must give the word 'corruptly' its ordinary dictionary meaning. The desire to screen an offender from the legal consequences of his act will be designated a corrupt motive, and it would not require evidence to satisfy the Court that the witness in giving false evidence had that desire. But it is doubtful whether the user cannot be corrupt unless it involves the corruption of a third person. 23 Bom L. R. 987. It is an essential element of the offence under this section that the documents should have been corruptly used or attempted to be used as true or genuine evidence. 85 Ind. Cas. 253—3 Bur. L. J. 349—26 Cr. L. J. 509.

Procedure.—Not-cognizable—Warrant—Bailable or not as in the offence of giving such evidence—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to Issuing or signing false certificate, any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Scope.—Numerous law require a certificate of some matter to be

ate must be false in a material point. An error in a name or date, accidental and not intended for any evil purpose, or a false statement of some irrelevant matter, is not within this section. The offence of forging a certificate is not here contemplated, but that of making or issuing a certificate which, being valid and sufficient in other respects, is yet false in a material point. The issuing or signing must therefore be by the person or officer authorised or believed to be authorised to

certify. The word "issue" means something different from using. It is the putting forth for the purpose of being used, and is preliminary to it—*Morgan and Macpherson*. The word "certificate" in this section is a certificate which is required by law to be given or signed for the purpose of being used in evidence in the course of administration of justice. 30 C. W. N. 120=42 C. L. J. 557.

Procedure—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

198. Whoever corruptly uses, or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence

Procedure—Not-cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the First Class.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Declaration—A declaration, before it can be made the foundation of a prosecution under this section, must be one which is admissible in evidence and which the Court before whom it is filed, is bound or authorized by law to receive as evidence of any fact. 35 A. 58 A false declaration or a certificate is not an offence under this section. 17 Bom. L. R. 222=3 Bom. Cr. C. 43=16 Cr. L. J. 309=28 Ind. Cas. 645. Where no criminal intention is made out, sale of more land than that which the decree allowed is not an offence under this section. 7 A. L. J. 93=11 Cr. L. J. 202=5 Ind. Cas. 695. Assertions made by a deponent to an affidavit, not from his personal knowledge, but from what he had been told and which had not been proved to be incorrect can not be made the subject of a sanction for perjury. 21 A. L. J. 83=L. R. 4 A. 6=74 Ind. Cas. 75=24 Cr. L. J. 747. The accused is entitled to know the exact words which are alleged to have been used by him and which are sought to be made the subject of a charge of

perjury. 21 A. L. J. 211=71 Ind. Cas. 661=24 Cr. L. J. 197=1923 All 325. Where a written statement is verified as required by Order 6, Rule 15, C. P. Code, but the Court had not ordered proof of the statements made by affidavit, *held* that the allegation in the written statement could not by itself be the basis of a conviction under this section. 49 A. 482=25 A. L. J. 327=100 Ind. Cas. 707=28 Cr. L. J. 323=A. I. R. 1927 All 383

Procedure—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

200. Whoever corruptly uses, or attempts to use, as true, any
 Using as true such declaration, knowing the same to be false, knowing it to be false,
 such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200

provide for the punishment of
 y which the detection of crime
 It is the duty of every good
 administration of the laws. The
 discharge of this duty must, in the absence of any direct legal obligation, rest in a great degree upon each man's sense of the duty which lies on him. But by various laws, special duties in regard to the detection of crime are imposed on landholders and certain other persons. All persons, however, if not bound by express provision of law to aid in the detection of offenders are at least under this legal obligation, that they shall not obstruct or mislead others in the pursuit of their duty.

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session Presidency Magistrate or Magistrate of the, first class.

201. Whoever, knowing or having reason to believe that an
 Causing disappearance of evidence of offence, or giving false information, to screen offender—
 offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment
 with that intention gives any information respecting the offence which he knows or believes to be false,

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

and, if the offence is punishable with transportation for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Scope and Application—This section applies to the person who screens the principal or actual offender, and not to a person causing disappearance of his own crime. 22 C. 638, 1 L. B. R. 316; 7 W. R. Cr. 52, 7 A. 749, 2 A. 713, 6 C. 789; 8 A. 252. In order to sustain a conviction under this section, it must be proved that an offence has been actually committed. It is not sufficient to establish that the accused had reason to believe an offence to have been committed 19 P. R. 1895 Cr.; 7 P. R. 1867 Cr.; 25 P. R. 1881 Cr.; 8 Bom. L. R. 538, 1 Weir 179; 19 P. R. 1895 11 C. 616; 1 Weir 180, 1 L. B. R. 308, Rat. Un Cr. C. 799; 3 A. 379

Offences of three grades are specified with regard to each of which the offence punishable under this section has its appropriate punishment provided. The substantial fact that some offence has been committed, and the knowledge or reason for belief that an offence has been com-

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able proof that some person, whether the person who has fled or another, has committed the offence which the accused is charged with endeavour to conceal. The criminal intention to screen the offender from punishment is a necessary part of this offence. Therefore an accidental or even mischievous effacing of marks, or anything else done thoughtlessly or in jest, is not sufficient, without

Suppose a culpa evidence to show

body This act,

of itself without the aid of other circumstances in any degree tend to criminate him. Whether the individual offender is known or unknown to the person charged under this section, he is guilty, if he obstructs the course of Justice in the manner indicated.—*Morgan and Macpherson.*

Causes any evidence of—The illustration appended puts the case

object is to defeat Justice. It is not clear whether these words include (though they appear to do so) all testimony of whatsoever description, such as oral and written testimony, as well as the evidence afforded by the existence of things.—*Morgan and Macpherson.*

A separate sentence under this section, along with a conviction of the accused of murder is illegal. 16 Cr. L. J. 583.

This section applies merely to the person who screens the principal or actual offender and not to the principal or actual offender himself. 91 Ind Cas. 541=27 Cr. L. J. 109=A. J. R. 1926 Lah. 209

Procedure—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session. If the offence is punishable with

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as following—

That you—, on or about the—day of—, at—, knowing or having reason to believe) that certain offence to wit—punishable been committed, did cause certain evidence of the said offence to to wit—(or knowingly gave false information to wit—) with the of screening the said (state the name of the offender) from

ment, and thereby committed an offence punishable under section 201 of the Indian Penal Code, and within my cognizance (or cognizance of the Court of Session)

And I hereby direct that you be tried (by the said Court) on the said charge

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Intentional omission to give information of offence by person bound to inform.

Scope.—The offence under this section cannot be treated as a minor offence under the previous section for an essential ingredient of the offence under this section is the legal duty of the accused to give information and that is no part of the offence under s 201—13 Cr L. J. 18. In order to constitute an offence under this section two things are absolutely necessary—viz (1) the substantial fact of an offence having been committed and (2) the knowledge or reasonable belief on the part of the accused that such was the case 2 W R Cr Letters, 1. This section punishes the illegal omissions of those who are by some law bound to give information where the offence has been committed.

1, Weir 181.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Presidency Magistrate or Magistrate of the 1st or 2nd class

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Giving false information respecting an offence committed.

Explanation.—In sections 201 and 202, and in this section, the word 'offence' includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

Application.—This section does not apply to the case of a person who gives false evidence as a witness to the police in the course of their investigation, and that only in reply to questions put to him. It contemplates information volunteered by some person *Sarju v Emperor, 7 A L J 1150* A person who under such circumstances volunteers information which he knows or believes to be false, obstructs justice, and is punished, whether, any intention to screen the offender can be proved against him or not, and whatever be the offence which the latter has committed—*Morgan and Macpherson*. This section applies to information volunteered by the informant and not to a false statement made in the course of an examination by a police officer. 57 Ind Cas 940—21 Cr L. J. 700.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Presidency Magistrate or Magistrate of 1st or 2nd class.

Charge—1 (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows—

That you—knowing (or having reason to believe) that the offence of—was committed by—, on or about—the day—at—, gave information respecting the said offence, to wit—which you knew or believed to be false, and thereby committed an offence punishable under s 203 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce

Destruction of document to prevent its production as evidence

as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Gist of the offence—In order to convict a person under this section, it must be proved, that he destroyed the document with the intention of preventing it from being used or produced as evidence 24 P R 1889 Cr

So ops—Whether the proceeding is of a civil or criminal nature, this section applies. There is no question here of the materiality of evidence. Whether material or not, it must not be secreted or destroyed to evade production in a judicial or other proceeding, if the production may lawfully be compelled—*Morgan and Macpherson*. Where rough

copy of a *panchnama* was destroyed owing to obliteration and a new copy made and duly signed, the destruction of the rough copy is no offence. 14 Bom. L. R. 1163—13 Cr. L. J. 913—17 Ind. Cas. 1008. This section is applicable even where the document is not valuable security. 38 C. L. J. 158

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Court of Session, Presidency Magistrate or Magistrate of 1st class.

205. Whoever falsely personates another, and, in such assumed character, makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Scope.—The offence punished, is not merely cheating by using a fictitious name, but by falsely assuming to be some other real person and in that character making an admission, etc.—*Morgan and Macpherson*

Causes any process to be issued.—These words are applicable

done "in a civil suit or criminal prosecution" "An intention to injure or defraud is not made part of the definition and therefore need not be proved—*Morgan and Macpherson*.

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property, or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent

authority, or from being taken in execution of a decree or order which has been made or which he knows to be likely to be made, by Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Comment—To bring an offence within this section there must be fraudulent removal, sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine. 18 W R Cr 65 The owner of property is, ordinarily speaking, by virtue of his ownership, free to sell it or to give it away as he sees fit. And all other persons have equally the right to receive it from him by way of purchase or gift. But the law has provided for many offences and contraventions of the law, punishment by fine, or forfeiture of property. Thus by some sections of this code it is enacted that upon conviction of certain offences the offender shall forfeit all or a portion of his property, by others it is enacted that such forfeiture may be awarded by the Court as part of the punishment. Laws relating to customs duties usually make confiscation of goods the punishment of any contravention of their provisions. And the ordinary sanction of a law is the imposition of a fine for the breach of it, recoverable usually by distress and sale of the offender's property. In all such cases, and also in the case of civil suits, the general law of the country must determine the legal effect of an ordinary transfer of property while suits or other proceedings are pending, the result of which may establish a claim against or otherwise affect such property. The penal provision in this section, which does not interfere with those of civil law concerning the recovery of the property, applies where there is an intention to defraud. A fraudulent removal, concealment, etc., with intent to withdraw property from an impending seizure under process of a Court of law or of some competent authority, is the offence made punishable. This is not only a grave offence against public justice, but a serious injury to the suitor, the object of whose suit is defeated or retarded thereby. The offence may, it seems, be committed by persons other than the owners of the property.—*Morgan and Macpherson*

Procedure—Not-cognizable—Warrant—Bailable—Not Compoundable—Triable by Presidency Magistrate or Magistrate of 1st and 2nd class

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows.—

That you—on or about the——day of——at——fraudulently removed (or concealed or transferred or delivered to——) your property to wit——intending thereby to prevent the said property from being taken——, forfeiture (or in satisfaction of a fine) under a of——which has been pronounced on——by (or which you to be likely to be pronounced) by——and that you thereby

an offence punishable under section 206 of the Indian Penal Code and within my cognizance

And I hereby direct that you be tried on the said charge

207. Whoever fraudulently accepts, receives, or claims any

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

Notes.—The receiver of the property, if he receives it with intent to defraud, is here made punishable—*Morgan and Macpherson*.

Procedure—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st. and 2nd class.

208. Whoever fraudulently causes or suffers a decree or order

Fraudulently suffering decree for sum not due.

to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first class.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Comment—In order to establish an offence under this section it is essential to prove that the claim made is one which the person making it knows to be false, and it is not sufficient to show that the claim is one which he believes or has reason to believe to be false or does not believe to be true claim. 38 P. R. 1888 Cr. Not only must the claim be false within the knowledge of the person making it, but the object of it must be to defraud, to cause wrongful loss or wrongful gain, to injure or to annoy. See sections 24, 25 and 44. A claim by filing a plaint, or claim made to prevent attachment before a decree, or a claim made to prevent a decree, are

It is not an
a suit for the
is authorised

when a suit appeared frivolous, vexatious, or groundless, to fine the plaintiff and to convict him to close custody till he pays the fine—*Morgan and Macpherson*. This section is not limited to cases where the whole claim made by the accused is false. It applies even where a part of the claim is false. A. W. N. 1890, 1. In order to bring a case under this section, it is immaterial whether the Court on which the false claim was instituted had jurisdiction to try the suit. 52 Ind. Cas. 666—20 Cr. L. J. 698. To justify a sanction for the prosecution of a plaintiff, under this section, the dismissal of his claim is not enough, it must be shown that the claim he was making was to his knowledge false. 61 Ind. Cas. 995—22 Cr. L. J. 467.

Proceduro—Not cognizable—Warrant—Bailable—Not compoundable—Presidency Magistrate or Magistrate of 1st class

210. Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent decree—An offence is committed when a decree fraudulently obtained, it does not make any difference whether it

decree alleged to be fraudulent has, or has not been subsequently set aside by the parties against whom it was made 13 C 193. see also 12 W. R. Cr. 37, 9 M. 101.

Satisfied.—In construing this section, it is necessary to attach to the word "satisfied" its ordinary meaning, and not to understand it as referring only to decree, the satisfaction of which has been certified 10 B 228; 16 C 126, see also 4 M. 325. U. B. R. (1897-1901) Vol. I, 278; 7 P. R. 1885 Cr., 59 P. L. R. 1911-12 Cr. L. J. 189

A decree holder who realises more than what is due to him, is not guilty under this section if he has done so under a mistake 11 P. W. R. 1914 Cr.=23 Ind. Cas. 471-15 Cr. L. J. 263. Where the accused fraudulently obtains decree for sums which had been disallowed in the former suit, the Court in which the second suit is filed can take action under this section 90 Ind. Cas. 660-26 Cr. L. J. 1588-26 P. L. R. 717.

Proceedure—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st class.

211 Whoever, with intent to cause injury to any person, institutes, or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—To cause injury to a person, is to cause harm.

295, A. W. N. 1907, 160.

The mere communication of suspicion to the police on which an enquiry may be initiated does not amount to the institution of a criminal proceeding within the meaning of this section. 1912 M. W. N. 1125.

The intention to cause injury, that is, to cause harm illegally to section 44) is instituted, and ction. 182, who in to a public

servant, with the intention of causing him to use his lawful powers to cause injury or annoyance. This Code contains no provisions for the punishment (under these names) of the offence of "subsequent abetment" or of "accessaries after the fact." The offences of persons falling within such descriptions at present are included among offences against Public Justice and are punishable under the next following and subsequent sections of this chapter—*Morgan and Macpherson*.

The offence of laying false information to the Police falls under the first paragraph of s. 211. 10 A. L. J. 429=13 Cr. L. J. 855=17 Ind. Cas. 791.

It is not necessary that any criminal proceeding should be taken on a complaint, in order to prosecute the complainant under this section. 26 A. 244 F.B.=1 Cr. L. J. 7

This section contemplates a charge which is indivisible in its nature. 5 C. W. N. 727.

To constitute an offence under the second portion of this section, it is necessary that the complaint which is alleged to constitute the false charge should have been made to a Police officer with a view to further proceedings or to a Magistrate competent to enquire into and investigate the matter of complaint. A. W. N. 1898, 144

Where a person makes a false report of an offence without having any one as the perpetrator thereof, he commits no offence. 4 A. L. J. 361=A. W. N. 1907, 146=5 Cr. L. J. 396

In a case under this section, it is the duty of prosecution to prove by satisfactory evidence that the charge is wilfully false to the knowledge of the maker of the charge. 18 C. W. N. 391=15 Cr. L. J. 355=23 Ind. Cas. 723.

Before granting any sanction under s. 211, the Magistrate ought to observe all the formalities prescribed under ss. 201—203 Cr. Pro. Code. 12 Bom. L. R. 229=5 Ind. Cas. 971=11 Cr. L. J. 338.

The answering of questions put to a person by a Magistrate in the enquiry which he has no option but to answer cannot be held to constitute a charge within the meaning of this section. 8 A. L. J. 1106=12 Cr. L. J. 433=11 Ind. Cas. 617. To sustain a conviction under this section there must be a charge of a specific offence made with the intention of setting the criminal law in motion. 10 Bur. L. T. 259.

For a conviction under this section it is necessary to establish that the accused knew there was no just or lawful ground for the charge. 61 Ind. Cas. 61=22 Cr. L. J. 333. Where a criminal case is compromised before the full evidence of the complainant is given, it is not proper to direct a prosecution under this section. 74 Ind. Cas. 1054=24 Cr. L. J. 862

To fall under s. 211 I. P. Code, the false charge must be made some person in authority, i. e. to a person who is in a position to get

offender punished. 26 O. C. 44-1923 Oudh 4. Unless there is intention to set the law in motion against any body, no offence under this section is committed. 6 N. L. J. 201-75 Ind. Cas. 158-24 Cr. L. J. 910-1923 Nag 313

The term institution in this section means the institution either by the accused himself, or by the police or others in consequence of the accused's actions in some criminal court. 65 Ind. Cas. 434-23 Cr. L. J. 82-1922 Lah 133

To fall under section 211, I. P. Code, the false charge must be made to some person in authority; i. e. to a person who is in a position to get the offender punished. 9 O. L. J. 342-69 Ind. Cas. 81-23 Cr. L. J. 641.

An application to the Police not being enquired into, the applicant addressed a petition to the Deputy Commissioner for enquiry into the matter. *Held*, the petition was not a complaint and action cannot be taken under s. 211. 24 Cr. L. J. 959-75 Ind. Cas. 543-1924 Nag 115.

Charge—I (name and office of Magistrate etc.) hereby charge you (name of the accused) as follows—

That you—on or about the—day of—at—with intent to cause injury to one C D appeared before the Magistrate and instituted criminal proceeding against him charging the said C D with having committed the offence of—knowing at that time that there was no just or lawful ground for such proceeding (or charge) against the said C D, and that you thereby committed an offence punishable under s. 211 of the Indian Penal Code.

212. Whenever an offence has been committed, whoever Harbours offender.—harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

shall, if the offence is punishable with death, be punished if a capital offence; with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for

a term which may extend to three years, and shall also be liable to fine ;

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both

'Offence' in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460 ; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Legislative changes.—The last paragraph has been inserted by Act III of 1894.

Scope—This section does not apply to the harbouring of persons, not being criminals, who merely abscond to avoid or delay a judicial investigation, nor, necessarily, to acts of assistance given to known criminals in the shape of money, food or means of escape, etc. It supposes that some offence has actually been committed, and that the harbourer gives refuge—with the intention of screening him from legal punishment—in his house, or in some hiding place, to one whom he knows or has reason to believe to be the offender. The precise offence may be unknown to him. Thus he may not know whether the person harboured has committed theft, or extortion, or robbery, but if he has reason to know that an offence against property has been committed by such person, this section will apply. To support the charge the following proof required :—

1. That an offence has been committed. The trial will not usually take place until the guilt of the principal offender has been ascertained.

by his conviction, if it takes place before, there must be sufficient proof of some offence committed.

2. The harbouring or concealment of the person of the offender must be proved. A mere receipt of the property plundered, or of the proceeds of it, will not constitute this offence.

3. Knowledge or cause for believing that the person harboured is the offender must also be proved.

The intention to screen from justice would be reasonably inferred from proof of the above circumstances. But of course if the accused can show satisfactorily that he had no intention of screening the offender this will be a good defence.

The section extends to all cases, save the two excepted ones. Thus a master receiving his servant, or a servant his master,—a brother—his brother,—or father his son,—will all be subject to punishment. In some of these instances, however, the offence may be deemed deserving of a very light punishment—*Morgan and Mospherson*

In order to constitute an offence under this section it must be established (1) that an offence has been committed (2) that the person known or reasonably believed to be the offender has been harboured or concealed, and (3) that such harbouring or concealing has been done with the intention of screening that person from legal punishment. 12 A. 434=A. W. N. 1890, 73, 71 P. R. 1867 Cr

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class. If punishable with imprisonment for 1 year and not for 10 years, in that case triable by Presidency Magistrate, or Magistrate of the 1st class, or Court by which the offence is triable

213. Whoever accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished if a capital offence ; with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ; and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

Illustrations—[Repealed by the old Criminal Procedure Code (Act X of 1882)].

Legislative changes—The exception to s. 214 has been substituted by the Indian Penal Code Amendment Act (8 of 1882) s. 6, for the one originally enacted.

Notes—It is not competent for a Magistrate to permit the offences of cheating and fraudulent personation to be compounded. 3 A. 283. This section includes the offer of a bribe by a person who has committed the offence that it is desired to screen. 1 Weir 194, see also 1 Weir 196. It was not the intention of the Legislature to punish the giving of gratifications, under a delusion that an offence has been committed or that the person was guilty of such offence. 14 M. 400—1 Weir 195—1 M. L. J. 163; see also U. B. R. (1892—1896) Vol. I, 196. This section is not applicable to offences where they are compoundable. 6 L. B. R. 48—15 Ind. Cas. 990—13 Cr. L. J. 574.

Procedure.—Cognizable—Warrant—Triable by Court of Session. It punishes or with imprisonment for 10 years—Magistrate or Magistrate of the First class or Court by which the offence is triable.

215. Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence

Taking gift to help to recover stolen property. &c.

punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Scope of section.—This section is applicable to the case of offender himself taking gratification. 1 Weir 196, 23 A. 81, 26 M. L. J. 598. An attempt to take gratification within the meaning of this section necessarily includes the idea of concurrence of wills between the giver and the taker, with this much super-added thereto, that some act has been done preliminary to the act of taking. 20 L. 389. This section is intended for the punishment for persons who, being usually in league with thieves, or well aware of their proceeding, obtain money, etc., for the recovery of stolen property, without making any effort to bring the offenders to justice. In many places, cattle, etc., are stolen by persons whose object it is to restore the stolen property to the owner on payment of a reward. The "go between," who is usually in case of cattle stealing a professional tracker, is the person contemplated by this section. If he aids or instigates the thieves, he is an abettor of theft. But in default of evidence of abetment, if he receives a reward for procuring the restoration of stolen property, without using "all means in his powers" to procure the apprehension and conviction of the offender, he is punishable under this section—*Morgan and Macpherson*. Where the thing is not stolen this section has no application merely because the accused took money from the complainant and failed to carry out his promise to find the thing. 9 P. R. 1915 Cr. This section is not intended to apply to the thief himself. U. B. R. 1914. 4th Qr. 43, see also 26 M. L. J. 598—15 Cr. L. J. 471. There can be no conviction for an offence under s. 215, until it is proved that a person has been deprived of moveable property by an offence punishable under this code. 6 Ind. Cas. 230—11 Cr. L. J. 295. Where a cattle dealer takes a ransom for the restoration of stolen cattle and fails to restore that property to the owner in spite of the promise he is guilty of an offence under s. 420 I. P. Code and not of the minor offence under s. 215 I. P. Code.—73 Ind. Cas. 145—24 Cr. L. J. 529—1923 Rang. 37. Where some time after the commission of a theft the accused proposed to find out the stolen articles on their being paid some money but took no steps after receiving the money to find out the thieves they are guilty of an attempt to commit an offence under s. 215. 46 A. 159—1923 All. 83. Where the accused assisted the owner in recovering certain horse

that had been stolen, but there was no evidence connecting the accused with the thief excepting mere suspicion, *Held* that under these circumstances the accused could not be convicted under this section 25 A. L. J. 866

Proceduro.—Cognizable—Warrant—Bailable—Not compoundable—
Triable by Presidency Magistrate or Magistrate of 1st class.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered—	216. Whenever any person convicted of, or charged with an offence, being in lawful custody for that offence, escapes from such custody
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or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person, with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if the offence for which the person was in custody or is ordered to be apprehended, is punishable with death, he shall be punished	with imprisonment of either description for a term which may extend to seven years,
If a capital offence ;	
and shall also be liable to fine ;	

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be	punished with imprisonment of either description for a term which may extend to three years, with or without fine ;
if punishable with transportation for life, or with imprisonment	

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of the person is alleged to have been guilty out of British India which he is, under any law Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended

Scope—The offence in the present section is aggravated, because the person harboured has escaped, after being actually convicted or charged with the offence, or because a warrant or order for his apprehension has issued—*Morgan and Macpherson*. It is an offence under this section to harbour or conceal a person for whose apprehension an order has been passed by a public servant, even when such apprehension is sought to be made not for the purpose of trying him for an offence that he may have committed, but for enforcing a punishment already inflicted on him for having committed the offence. 11 C. L. J. 109=5 Ind. Cas. 311=11 Cr. L. J. 95. In order to constitute an offence under this section, harbouring must be done with the intention of preventing the apprehension of such person. L. B. R. (1872-1892) 174. See also 15 Cr. L. J. 399=28 Ind. Cas. 701. The word "harbour" in this section must be construed liberally. It includes a person who harbours the offender in a house belonging to a third person and who visits him there. 14 Bom. L. R. 483=16 Ind. Cas. 509=13 Cr. L. J. 701=1 Bom. Cr. C. 151. The word "harbour" does not only mean to provide shelter food and clothing but includes "the assisting of a person in any way to evade apprehension." 5 Lah. L. J. 329=73 Ind. Cas. 691=24 Cr. L. J. 639=1923 Lah. 223, see also 72 Ind. Cas. 949=24 Cr. L. J. 485. The mere giving of a meal to two proclaimed offenders is not an offence under this section. 6 Lah. L. J. 481. For a conviction under this section, it must be proved that the accused knew the person harboured to be a person for whose apprehension an order had been made by competent authority. 6 Lah. L. J. 478=1925 Lah. 103.

Procedure—Cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class. If punishable with imprisonment for 1 year and not for 10 years, triable by Presidency Magistrate, Magistrate of the first class, or Court by which the offence is triable.

216A. Whoever, knowing or having reason to believe that any persons are about to commit, or have recently committed, robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Penalty for harbouring robbers or dacoits.

Explanation—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

Gist of Offence.—In order to justify a conviction under this section, there must be evidence, both of knowledge and of intention. Rat. Un. Cr. C. 775. Lending a pony to certain dacoits to enable them to carry their loot away is not "harbouring" under this section. 22 A. L. J. 496—80 Ind. Cas. 711—1924 All 676. This section requires that no one should harbour any persons who are about to commit a dacoity with the intention of facilitating the commission of such dacoity. 26 Cr. L. J. 1028—87 Ind. Cas. 916—A. I. R. 1926 Sind. 916

Proceduro.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Legislative changes.—This section has been inserted by Act. III of 1894 s. 8

216B. In sections 212, 216, and 216A, the word 'harbour'

includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension.

Legislative Changes.—Added by Act VII of 1894.

Scope—The words at the end of this section, "or assisting a person

may make good the escape

27 Punj. L.R. 218=7 Lah.

1926 Lah. 206.

217. Whoever, being a public servant, knowingly disobeys

any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment to which he is or is likely thereby to be liable, shall be punished with imprisonment for life or for any term not exceeding ten years, or with fine, or with any combination thereof.

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Application.—For the purpose of a conviction under this section, it is sufficient that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant and that he has done this with the intention of saving a person from legal punishment. It is not further necessary to show that, in point of fact, the person so intended to be saved had committed an offence or was justly liable to legal punishment. 3 C. 412; W R. 1864, Cr 5; 1 J. G 45. Before a person can be convicted under this section, it must be shown that there is a direction of the law as to the way in which he is to conduct himself, as such public servant, and this direction must be a direction to be found in some positive Statute or some rules or regulations which are declared by Statute to have the force of law. A. W. N. 1902, 16, see also 1 M. 266—1 Weir 196.

A police officer, who apprehends several persons at night, on suspicion that they have committed culpable homicide, and who keeps them in the village where they have been arrested after tying them together by the hands, is not guilty of an offence under s. 217, if the prisoners escape in the course of night. 18 P. R. 1871, Cr. A police constable, who retained for himself a piece of gold found in a search for stolen property but not proved to be part of the stolen property and failed to report his possession to his superior officers under s. 523 of the Code of Criminal Procedure, is guilty of an offence under s. 217 16 Cr L. J. 453. Where a person knowingly disobeys any direction of law he is guilty of an offence under s. 217 3—2 Bom. Cr C. 90—
 Public servant, who retained for property and failed under s. 523 of the

Code of Criminal Procedure, is guilty of an offence under this section. 29 Ind Cas 85.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

218. Whoever, being a public servant, and being, as such

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture

public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the

public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from leg

punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both,

Gist of offence—To support a conviction under this section, it is necessary to prove that the accused believed, or had reason to believe, that the person concerned had committed an offence, though it is not necessary to prove that such an offence had, as a matter of fact, been committed. Rat. Un Cr. C. 405. This section contemplates the wilful falsification of a public document with the intent thereby to cause loss or injury, and "this" means by the document itself or by some transaction with which it is essentially connected. Rat. Un Cr. C. 201.

To constitute an offence under this section it is not necessary that the incorrect document should be submitted to another person or be otherwise used by the writer. 13 P. R. 1881, Cr. The words "charged with the preparation" in s. 218, Penal Code, are not restricted to the narrow meaning of "enjoined by a special provision of law" 27 G. 144. A village Munsif, trying a case of theft, is not bound to prepare a calendar. Therefore, a village Munsif who submits a false calendar of a case of theft tried by him is not guilty of an offence under s. 218. 1 Weir 197. Where a police inspector had been charged with framing an incorrect record, in that he entered in his diary that certain cartmen told him that "they were not beaten by dacoits" while, in fact, they told him that "they were beaten by dacoits," this, of itself is not sufficient to sustain a conviction under s. 218. 1 P. Code. 1911 M. W. N. 44=12 Cr. L. J. 455=11 Ind. Cas. 799. It is doubtful whether it is unnecessary under this section to prove an intention to screen any particular person. 23 Bom. L. R. 823=63 Ind. Cas. 145=22 Cr. L. J. 609. For a conviction under this section the actual guilt or otherwise of the alleged offender is immaterial. It is sufficient that the commission of a cognizable offence has been brought to the notice of the accused officially and in order to screen the offenders he prepared the record in a manner which he knew to be incorrect. 7 Lah. L. J. 331=26 Cr. L. J. 832=86 Ind. Cas. 661.

Procedure—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session.

219. Whoever, being a public servant, corruptly or mali-

Public servant in judicial proceeding corruptly making report, &c., contrary to law.

ciously make a report or statement of
of
ver.
be
with imprisonment of either description

for a term which may extend to seven years, or with fine, or with both.

Procedure —Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session.

220 Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that, in so doing, he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both,

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

Scope—Where an arrest is legal, there can be no guilty knowledge "superadded to an illegal act" such as is necessary to establish against an accused to justify a conviction under this section. It is only when there has been an excess by the police officer of his legal powers of arrest that it becomes necessary to consider whether he has acted corruptly or maliciously and with the knowledge that he was "acting contrary to law." 10 B. 506 To justify a conviction under this section, there must be a guilty knowledge superadded to an illegal act. 9 B. H. C. R. 346, Rat. Un. Cr. C. 222 ; 5 Bom. L. R. 597.

Procedure —Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session

221. Whenever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for, an offence, intentionally omits to apprehend such person or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for, an offence punishable with death ; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person is confined, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years

Notes—A village Chowkidar is not legally bound, as a public servant, to apprehend a person accused of having committed murder, if the murder was not committed within his village or if the person accused was not a proclaimed offender, or if the homicide was not committed in his presence 3 A 60 An offence falling under the Police Act and also under the Penal Code should be punished under the latter enactment 1 P. R. 1874 Cr.

Proceduro—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session If punishable with transportation for life, or imprisonment for 10 years, triable by Court of session, Presidency Magistrate or Magistrate of the 1st class, if with imprisonment for less than 10 years, triable by Presidency Magistrate, or Magistrate of the 1st or 2nd class

Charge—1 (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows.

That you,—on, or about the—day of—at—being a public servant to—
 bound to apprehend (or keep in confinement, or to keep in
 the offence of—(or liable to be
 intentionally omit to apprehend
 such person to escape, or inten-

jurisdiction of the Court of Session,

And I hereby direct that you be tried by the said Court on the said charge.

222. Whoever, being a public servant, legally bound as such

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed,

public servant to apprehend, or to keep in confinement, any person under sentence of a Court of Justice for any offence, "or lawfully committed to custody," intentionally omits to apprehend such person, or intentionally suffers such person to escape, or

intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

with transportation for life, or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject by a sentence of a Court of Justice, or by virtue of a commutation of such sentence to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, "or if the person was lawfully committed to custody."

Amendment—The words within quotations have been inserted by the Indian Penal Code Amendment Act 27 of 1870 s 8.

Procedure—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session if under sentence of imprisonment for less than 10 years or lawfully committed to custody then triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class and the offence is bailable

223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with, or convicted of any offence, "or lawfully committed to custody," negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both

Amendment.—The words within quotations have been inserted by the Indian Penal Code Amendment Act, 27 of 1870 s 8.

Application—Before a man can be convicted under this section, of having negligently suffered a prisoner to escape, it must be shown, not only that he was guilty of negligence, but that the escape was all the natural and probable consequence of his negligence. 7 A

although an attempt was made to prevent him from so doing, *held* that the accused could not be convicted under this section. 1 Weir 204. An arrest of a person by an officer authorised in that behalf, i.e. an imputation of the alleged offence until the case goes before some court. Rat, Un Cr. C. 298 = Cr Reg 46 of an offence in a Native State escapes Police has no power to arrest him, unless he is a native Indian subject of Her Majesty, or unless there is any warrant under s. 11 or s 15 of Act. XXI of 1879. If he escapes from the custody of a British Police Officer, who has arrested in the absence of the conditions abovementioned, he has not committed an offence under s 224 I P Code 20 P R. 1891, Cr.; see also 21 P. R 1885 Cr Trivial resistance to unlawful force on the part of an arresting officer does not constitute an offence under this section. 1 L B R 173 Where a Judgment-debtor was allowed to go by the decree-holder and the process server, no offence was committed 11 Cr L J 417-7 Ind Cas 392-8 M L T 286 Where the accused were convicted under s 456 of the Penal Code for having trespassed into a house with intent to commit the offence under s. 224 in that they ran away to avoid being arrested, *held* that such running away did not amount to an offence under this section A W N 1891, 64. The conviction of a prisoner who escapes from Jail in which he was confined, under s 123 of the Cr Pro Code, for having failed to furnish security to be of good behaviour, should be under s 225 B and not under section 224. 18 A L. J 1039 = 58 Ind Cas 831

Proceduro — Cognizable — Warrant — Bailable — Not compoundable — Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

225 Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts in rescue, any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence

punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine

Notes.—The illegal obstruction is used in two sections namely ss. 224 and 225, and by virtue of two other sections, namely 184 and 186, certain obstructions are punishable. 1 Weir 211. Where a village Chukidar in charge of a person handed over to him by a private person was prevented from taking such person to the police station, an offence under this section has been committed 29 A. W. N. 1917, 179 = A. L. J. 483 = 6 Cr. L. J. 10. A person rescuing another who is lawfully in the custody of a private person, is guilty of an offence under s. 225. 1 Weir. 209. Any resistance to a person, who has no lawful authority to arrest him is not an offence 5 L. R. 21 = 31 Ind. Cas. 619 = 10 Cr. L. J. 118. A civil warrant not addressed to a bailiff by name is not an illegal warrant 15 Cr. L. J. 439 = 24 Ind. Cas. 173 = 15 Cr. L. J. 576. The provisions of s. 225B were enacted by the Legislature to meet cases not provided for in section 225. 20 P. R. 1911 Cr. = 14 Ind. Cas. 426 = 13 Cr. L. J. 234 = 260 P. L. R. 1912. Arrest on a warrant allowing bail without intimating that bail has been allowed, is illegal. 16 C. W. N. 549 = 15 Ind. Cas. 1006 = 13 Cr. L. J. 590.

Where sometime after the commission of a theft, the accused proposed to find out the stolen articles on their being paid some money but took no steps after receiving the money, to find out the thieves they are guilty of an attempt to commit an offence under s. 225. 20 A. L. J. 927.

If a person after committing a non-bailable and cognizable offence who did not actually see him, he is not guilty of
922 = 1922 Lah. 73 = 64

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class. If charged with an offence punishable with transportation for life

or imprisonment for ten years—Not bailable and triable by Court of Session, Presidency Magistrate and Magistrate of 1st class. If charged with a capital punishment, or if the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards or if under sentence of death—Not-bailable triable by Court of Session

225A. Whoever, being a public servant legally bound, as such public servant, to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both

Legislative changes.—This section has been substituted by Act 17 of 1870, s 9.

Procedure.—In case of intentional omission or sufferance—Not cognizable—Warrant-Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate, or Magistrate of 1st class. In case of negligent omission or sufferance—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

225B. Whoever, in any case not provided for in section 224, or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both

Legislative changes.—This section has been substituted by Act 17 of 1870, s 9.

Application—In order to obtain a conviction under this section it is necessary for the prosecution to prove that the custody from which

accused escaped was a lawful custody, i. e. that the accused person was lawfully detained. 7 Cr. L. J. 74. A man legally arrested for an offence must submit to be tried and dealt with according to law. Even when the escape is effected by the consent or neglect of the person that kept the prisoner in custody, e. g. when the person having the custody of the accused went to sleep, the accused is no less guilty, as neither such illegal consent nor neglect absolves him from the duty of submitting to the judgment of the law. 31 M. 271.

An arrest of a person, who may be lawfully arrested without a warrant, by a *Chaukidar*, on the authority of an order in writing delivered to him in conformity with the provisions of s. 56 (1) of the Cr. Pro. Code, would be legal; and, therefore, resistance by the accused to the lawful apprehension of him by the *Chaukidar* is an offence under this section. 10 C. W. N. 287—3 Cr. L. J. 201. Where a warrant of arrest was signed by the sheristadar of a Civil Court duly authorised to sign them, the judgment debtor resisting its execution would be guilty of an offence under s. 225 B of the Penal Code 6 C. W. N. 845. A person who merely goes to his house and stays there on seeing a warrant to arrest him in execution of a decree, does not offer resistance or illegal obstruction within the meaning of s. 225 B, U. B. R. 1906, Penal Code, 29—4 Cr. L. J. 287. Resistance to the execution of a warrant, issued to arrest a witness under s. 90 of the Criminal Procedure Code in the first instance, without previously serving summons upon him for attendance, is not an offence. 15 C. W. N. 1001—11 Ind. Cas. 591—12 Cr. L. J. 409—38 C. 789. Where accused is charged with having offered obstruction to the . . . of age by the police for theft, . . . V N 543—30 Ind. Cas. 154 . . . person under s. 225 B and . . . attempted to be executed was addressed to the person with a wrong description to which the accused did not answer. 28 C. 399—5 C. W. N. 413. In a case of resistance to the execution of a warrant, issued by a Civil Court it must be proved that the warrant was shown to the person when he wanted to show it. 5 C. W. N. 843. To convict a person under this section, the warrant in question must be legal. 27 A. 91—A. W. N. 1905, 66—2 Cr. L. J. 155. Before a person could be convicted of an offence under this section, it must be proved that the officer armed with the warrant of arrest produced his warrants before the person and that he made an attempt to arrest him or that in fact the person was arrested. 10 Cr. L. J. 3. "Escape" in this section includes an escape which is effected by the consent of the custodian. 25 M. L. T. 290—(1919) M. W. N. 695—9 L. W. 216—49 Ind. Cas. 659—20 Cr. L. J. 208. In order to constitute an offence under this section something more is required than an evasion of arrest or a mere assertion by the person sought to be arrested that would not like to be arrested or that a fight would be the result of such arrest 20 Cr. L. J. 84—48 Ind. Cas. 832—33 P. R. Cr. 1918. Mere absconding is not

sufficient to justify a conviction under this section 1 Rang. 218=2 Bur. L. J. 246=74 Ind. Cas. 990=24 Cr. L. J. 848. Subsequent surrender of the prisoner already rescued does not exonerate the accused 2 Bur. L. J. 19=72 Ind. Cas. 27=24 Cr. L. J. 307=1923 Rang. 133

Procedure—Cognizable—Warrant—Bailable—Not compoundable—
Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

226. Whoever, having been lawfully transported, returns from such transportation, the term of Unlawful return from such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported

Procedure—Not cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session

Charge.—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*) as follows :—

That you——on or about the——day of——were sentenced to transportation by the Court of Session of (or by the High Court of——) for a term of——and that on the——day of——at——you did return from such transportation, the term of such transportation not having expired, and your punishment not having been remitted, and that you thereby committed an offence punishable under section 226 of the Indian Penal Code, and within the cognizance of the Court of Session (or High Court)

And I hereby direct that you be tried by the said Court on the said charge.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Procedure—Not cognizable—Summons—Not bailable—Not compoundable—Triable by the Court by which the original offence triable

228 Whenever intentionally offers any insult, or causes intentional insult or any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Application—This section is aimed at something other than prevarication in giving evidence. 1 Weir 214, but see Rat Un. Cr. C. 69. Under this section the insult or interruption to the Court should be intentional. 6 Bom. L. R. 541. A person chewing betel, while being examined as a witness, was held guilty, under this section. 1 Weir 217. The Court in which an offence is committed under this section should try the offender itself then and there and pass order under that section. 6 C. L. J. 713=6 Cr. L. J. 405. The judicial proceedings continue until the prisoner is discharged or removed in custody. 1 Weir 214. Where an offence under this section is committed before an officer while he was acting in a certain capacity he cannot in another capacity take up and try the offence. 12 W. R. Cr. 18. Abuse to a *Tasildar* is not an offence under this section, where the *Tasildar* is not sitting in any

1841 Cr. A. error expression Court can hardly be treated interruption of the proceedings under this section. 43 1 W. R. 1912 Cr. = 15 Ind. Cr. 943 = 13 Cr. L. tion the act must be done

1 Weir 216. Listening to leave the Court is not an interruption. 1 Weir 217.

Defamatory statements about trying Magistrate in transfer application is not an offence under this section. A. W. N. 1892, 145, see also 137 P. L. R. 1903. Absence from Court is not an interruption of the Judge sitting in Court within meaning of s. 228. 1 Weir 215. A person

section, e to a Weir to an Weir should be intentional. Some latitude should be allowed to a member of the bar insisting, in the conduct of his case, upon his question being taken down or his objections noted, where the Court thinks the question inadmissible or the objection untenable. 6 Bom. L. R. 541 = 1 Cr. L. J. 612; see also S. C. 186, Oudh; 29 P. L. R. 1903.

Mere audible remark by the accused, which interrupted the proceedings in a Court of Justice, is not enough to sustain a conviction for an

offence under s 228 I. P. Code 2 L. W. 686=29 M. L. J 274=16 Cr. L. J. 610=30 Ind. Cas 434 Use of vulgar language for the sake of emphasis does not constitute an offence under this section. 1 Weir 216 A mere not giving answers when asked by Court does not make a defendant an accused under this section 1 Weir 218 Mere retracting statements in giving evidence does not constitute an offence under this section 1 Weir. 216 The chief ingredient in the offence under this section is the intention of the offender 1923 Lah. 48, see also 29 Bom. L. R. 386=66 Ind Cas. 821=23 Cr L J 325. An accused person who during the hearing of a case makes an impertinent threat to a witness in the box, clearly commits an offence under this section 45 A 272=21 A L J 72=L. R 4 A 8 Cr.=74 Ind Cas 260=24 Cr L. J. 756

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by Court in which offence is committed, subject to provisions of Ch. XXXV of Cr. Pr Code.

Charge—I (name and office of Magistrate, etc.) hereby charge you (name of the accused) as follows.—

That you——on or about the——day of——at——intentionally offered insult (or caused interruption) to wit——to a public servant to wit——while he was sitting in a stage of judicial proceeding to wit——and you thereby committed an offence punishable under section 228 of the Indian Penal Code and within my cognizance

And I hereby direct that you be tried on the said charge.

229 Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or, sworn as a juryman or assessor in any case in which

Personation of a juror or assessor,

he knows that he is not entitled by law to be so returned, empanelled, or sworn, or, knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Procedure—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st class.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT
STAMPS.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

"Coin" defined.

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen's coin for the purposes of this chapter, notwithstanding that it may have ceased to be used as money

Illustrations

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin
- (c) Medals are not coin, inasmuch as they are not intended to be used as money
- (d) The coin denominated as the Company's rupee is the Queen's coin.

(e) The 'Farukhabad' rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin, although it is no longer so used.

Legislative changes.—The first paragraph has been substituted by Act 19 of 1872 and the second paragraph by Act 6 of 1896. Illustration (e) has been added by Act 6 of 1896.

Scope of the chapter.—The offences comprised in this chapter, though very different in character, all agree in this, that the intention of the offender is to produce, or to pass off upon another, something which he professes to be what it really is not. Chapter XII of the Code deals with two sorts of money, viz coin and the Queen's coin, as defined by s. 230, and different degrees of penalties are in general applied to the same offence, when committed as regards the last sort.—*Mayne's Criminal Law* s. 390.

Coin.—A gold mohor of the reign of Shahjahan cannot be deemed to be coin within the meaning of this section. 29 A. 141, see also A. W. N. 1882, 100

Queen's coin.—Murshidabad rupees of the 19th year of Shah Alam formerly used with the sanction of the Government of British India for

the time being as 'money are "Queen's coins"—1 P. R. 1903 Cr.=47 P. L. R. 1903, 28 A 62=2 A. L. J. 498; A. W. N. 1903, 115.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation:—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Notes—The offence of counterfeiting, or knowingly performing any part of the process of counterfeiting coin, is committed by the person who counterfeits the coin, or who knowingly performs any part of the process of counterfeiting coin.

The coin to be issued as coin, and does not bear any resemblance to coin. But the punishment provided by this section applies equally whether the act of counterfeiting is complete or unfinished. To prove the offence of counterfeiting it is not necessary to shew that the accused person was detected in the act. But presumptive evidence, as in other cases, will be sufficient, as that false coin was found in his possession, and that there were printing tools discovered in his house, etc. In support of a charge of performing any part of the process of counterfeiting, it will not be sufficient merely to show that steps have been taken towards a counterfeiting as by providing materials, tools, etc., but some stage of the process itself must be proved to have been commenced. The knowledge that the process is for the purpose of counterfeiting coin, and not for an innocent purpose, may be shewn by such presumptive evidence as is referred to above—*Morgan and Macpherson*. The word "counterfeit" as used in this code, is defined by s 28 to involve an intention, by means of that resemblance, to practise deception, or a knowledge that it is likely that deception will thereby be practised, and such an intention, or knowledge, will always be inferred from the mere fact of counterfeiting, unless under circumstances which conclusively negativate it. Such circumstances must be so rare that it is unnecessary to imagine instances *Mayne's Criminal Law* s 590. In order to constitute an offence under this section counterfeit coin need not be made with the primary intention of its being passed as genuine. It is sufficient if the resemblance be so close that it is capable of being passed as genuine. 4 P. L. J. 525. To see also s 28. Weir coin have some such resemblance to a piece of the genuine coin as to show

it was intended to resemble and pass for it, though the imitation may be imperfect or the process incomplete 1 Weir 219

Procedure—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session

Charge—I (name and office of Magistrate etc.) hereby charge you (name of the accused) as follows—

That you—, on or about the—day—at—counterfeited (or knowingly performed—) a part of the process of the counterfeiting coin) a—and that you thereby committed an offence punishable under s. 231 of the Indian Penal Code and within the cognizance of the Court of Sessions.

And I hereby direct that you be tried by the said court on the said charge

232. Whoever counterfeits, or knowingly performs any part of Counterfeiting Queen's the process of counterfeiting, the Queen's coin coin shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes—When the coin counterfeited is the Queen's coin, that is coin in of a British punishment of her description. a coin used to coin where the ring was is no offence 23 A. 420 To constitute the offence described in this section there must be an intention that the coins made, will be

coin at the time of receiving possession of such coin, or the absence of such guilty knowledge at first Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances 23 W. R. Cr. 4

Procedure—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

233. Whoever makes or mends, or performs any part of the Making or selling instru- profess of making or mending, or buys, ment for counterfeiting sells, or disposes of, any die or instrument, coin, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Notes—When the instrument is a die, by which the metal is marked so as to resemble a coin and the act of counterfeiting is completed, or any other instrument appearing by a mark on the face of it to be fit for coining, there can be little doubt of the knowledge of the guilty purpose for which it is intended. But supposing the instrument to be one which is used in other trades, as the essence of the offence is the guilty knowledge of the purpose for which it is intended, the prosecutor should prove that the act of making or mending, etc. was done with such knowledge—*Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Charge—I (*name and office of Magistrate, etc.*) hereby charge you (*name of accused*), as follows:—

That you—on or about the—day of—, at—, did make (or mend or perform any part of the process of making or mending to wit—, or buy or sell, or dispose of) a certain die (or instrument) for the purpose of being used (or knowing or having reason to believe that it was intended to be used) for counterfeiting coin, to wit—, and that you thereby committed an offence punishable under s. 233 of the Indian Penal Code, and within my cognizance (or cognizance of the Court of Session or High Court.)

And I hereby direct that you be tried by the said Court on the said charge.

234. Whoever makes or mends, or performs any part of the process of making or mending, or, buys, sells, or disposes of, any die or instrument, for the purpose of being used or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes—The offence relates to the Queen's coin and is therefore more severely punished—*Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

235 Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for

Possession of instrument or material for the purpose of using the same for counterfeiting coin ;

a term which may extend to three years, and shall also be liable to fine :

and, if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—For a conviction under this section it is not only necessary that the accused should be in possession of the instruments or materials for counterfeiting coin but it should also be proved that the possession was within the accused's knowledge 16 Cr. L. J. 264. When the offence consists in the possession of moulds, the prosecution is bound to adduce evidence to show that the moulds are capable of producing counterfeit coin 1 Weir 219. The possession contemplated is not possession, which has never been voluntary 6 Bom. L. R. 887. In order to convict a person under this section, instruments for counterfeiting coin must be in the exclusive possession of the accused 7 P. L. R. 1924—4 Cr. L. J. 40. In order to constitute offences under this section, it is not necessary to prove that the accused intended that the spurious coin should go into circulation and be used as money. It is sufficient that there should be intention to practise deception by means of the imitation 4 P. R. 1899 Cr. Where a person, who is passing counterfeit Queen's coin was, on being chased, found in possession of instruments of metal used for counterfeiting coin, *held* that he should be convicted under s. 235, and not under s. 240, as the latter section did not apply to the actual coins, 10 P. R. 1892 Cr. Where there are moulds apparently capable of turning out the counterfeit coins there can hardly be any doubt that the moulds were used for preparing the counterfeit coin 4 Pat. L. J. 525—5 Ind. Cas. 525. Where the accused was convicted of and sentenced for an offence under s. 232 I. P. Code that is to say, for counterfeiting coin and on a second count for having in his possession implements and materials for the purpose of using the same for counterfeiting King's coin under s. 235 I. P. Code, *held* that the possession of such implements and materials being part and parcel of the transaction of counterfeiting coin the sentence for the second offence was illegal. 5 Lah. L. J. 272—71, Ind. Cas. 700—24 Cr. L. J. 236.

Procedure—Cognizable—Warrant—Not-bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class if the offence affect Queen's coin in that case triable, only by Court of Session.

236 Whoever, being within British India, abets the counterfeiting of such coin within

Notes—Of the several modes of abetment, abetment by aid seems most likely to occur in this case. Any person in India, whether a subject or a foreigner, supplying instruments or materials to persons elsewhere for the purpose of counterfeiting any coin is punishable. Whether the coin is Queen's coin, or is a coin, which though current in some parts of India (as the Spanish Dollar) is not a coin coming under the description of Queen's coin, or is a foreign coin not current in India, the abetment of the counterfeiting it is punishable under this section *Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

237. Whoever imports into British India, or exports there—
Import or export of coin. from, any counterfeit coin, knowing or
counterfeit coin. having reason to believe that the same is
 counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the First Class

Charge.—I (name and office of Magistrate, etc.) hereby charge you (name of accused) as follows—

That you—on or about the—day of—at—, imported into (or exported from British India, certain pieces of coin, knowing or having reason to believe) that the same were counterfeit, and that you thereby committed an offence punishable under the Indian Penal Code and within my cognizance

And I hereby direct that you be tried by the said court on the said charge.

238. Whoever imports into British India, or exports there—
Import or export of coin. from, any counterfeit coin which he knows
counterfeit of Queen's coin or has reason to believe, to be a counterfeit
 of the Queen's coin, shall be punished with transportation for life,
 or with imprisonment of either description for a term which may
 extend to ten years, and shall also be liable to fine.

Notes—The offence in this and the preceding section consists in an import or export, whether by sea or by land, of any coin known by the importer, etc., or which he has reason to believe, to be counterfeit. The same evidence which would show that an importer had reason for such a belief would, it seems, also prove a guilty knowledge on his part—*Morgan and Macpherson*

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

239 Whoever, having any counterfeit coin, which at the time

Delivery of coin, possessed with knowledge that it is counterfeit.

when he became possessed of it, he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts

to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Scope—The offence for which punishment is provided by this section is not the offence committed by the coiner 3 N W P 150

The Code distinguishes between two different classes of utterers. A utterer by profession, who is the agent employed by the coiner to bring counterfeit coin into circulation, is guilty of a very high offence. Such an utterer stands to the coiner in a relation not very different from that in which a habitual receiver of stolen goods stands to a thief. He makes coining a far less perilous and far more lucrative pursuit than it would otherwise be. He passes his life in the systematic violation of the law, and in the systematic practice of fraud in one of its most pernicious forms. He is one of the most mischievous, and is likely to be one of the most depraved of criminals. But a casual utterer, an utterer who is not an agent for bringing

of lawless habits. This
rs in false coin. Their
ceived it that it was
dealers. The offence
contemplated in this section appears to be a delivery or attempt to

relevant. 8 B 223; see also 8 C. W. N. 717.

procedure.—Cognizable—Warrant—Not-bailable—Not compound-

able—Triable by Court of session, Presidency Magistrate or Magistrate of the First class

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes—A heavier punishment is here given because the offence relates to Queen's coin—*Morgan and Mackpherson*. Knowledge on the part of the accused, that the coin was counterfeit, when they first came to possess of it, is an element of the offence as defined in this section. 1 Weir 222.

procedure—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration

A, a coiner, delivers counterfeit Company's rupees to his accomplice B for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Knowledge—To constitute an offence under this section, there must be evidence that the accused knew the coins to be counterfeit.
5 C P L R. 5

The gist of an offence under this section is that a person should deliver to another person as genuine, or attempt to induce another person

to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession. 4 N W P 62

Procedure—**Cognizable**—**Warrant**—**Not bailable**—**Not compoundable**—**Triable by Presidency Magistrate or Magistrate of the first or second class**

Charge—1 { *name and office of Magistrate et c.* } hereby charge you (*name of the accused*) as follows—

That you—on or about the day of , it delivered to A B (or attempted to induce A B to receive as genuine—which is a counterfeit coin and which you knew to be counterfeit although you did not know it to be counterfeit when you took it into your possession and thereby you have committed an offence punishable under s. 242 of the Indian Penal Code, and within my cognizance

And I hereby direct that you be tried on the said charge

242. Whoever, fraudulently, or with intent that fraud may be

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof	committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.
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Snope—The mere possession of counterfeit coin is an offence under ss. 242 and 243, even though no attempt is made to pass it off, provided it can be shown that it was kept for a fraudulent purpose, and was originally obtained with a guilty knowledge. The mere fact of a single base coin being found in a party's possession would not, without further evidence be sufficient to create a presumption that the knew it to be counterfeit when he obtained it, and intended to make a fraudulent use of it. But where a considerable number of base coins is found in any man's possession, the presumption of guilt would be sufficient to make a conviction lawful, unless the possession could in some manner be explained or accounted for—*Mayne's Criminal Law, 3rd Edition pp. 811–812.*

Procedure—**Cognizable**—**Warrant**—**Not bailable**—**Not compoundable**—**Triable by Court of Session, Presidency Magistrate or Magistrate of the First class.**

243. Whoever fraudulently or with intent that fraud may be

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.	committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counter-
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feit shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes—The offence in this and the preceding section, is the possession of counterfeit coin (with intent to defraud) by a person who from his knowledge at the time when he became possessed of it, may be presumed to be a professional utterer. These sections are not intended to apply to the case of a possession by another person who can show that, although he received coin knowing it to be counterfeit, the receipt was for no guilty purpose,—as if he shows that it was for the purpose of testing the coin, or of destroying it, or for safe custody until required to be produced in a Court of Justice, etc.—*Morgan and Macpherson*. Before a conviction can be had under this section, the prosecution must prove that the accused knew that the coin was counterfeit at the time he became possessed of it. The evidence of course, may be direct or presumptive 12 Cr. L. J. 79-9 Ind. Cas. 449. Where there is nothing to show that a person charged under s. 243 of the Penal Code was in possession of counterfeit coins fraudulently or with intent that fraud may be committed, or that he knew when he became possessed of them, that they are counterfeit, the requisition of s. 243 are not fulfilled 69 P. L. R. 1902-7 P. R. 1902 Cr., see also 44C 477-21 C. W. N. 33-28 C. L. J. 400.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

244 Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes—The law has fixed the weight and composition of various coins and has declared in what case they shall be a legal tender. The object of this section is to secure the purity of the coinage and its correct conformity to the legal standard against the act or omission of persons employed in mints. The proof must be that the person is employed in a Government mint and that the coin which is the subject of the offence was made or issued to vary the definition, and therefore it is not necessary that any wrongful gain should be made by the person charged, or that loss should be caused to the Government or the public.—*Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any unlawfully taking coining instrument from mint coining tool or instrument, shall be punished with imprisonment, of either description for a term which may extend to seven years, and shall also be liable to fine

Notes—Suppose the instrument to be one used in an ordinary trade: the taking may be for an innocent use in such trade. The substance of this offence consists in taking a coining tool for the purpose of using it to make counterfeit coin. If the instrument appears on its face to be intended for the purpose of making coin, and it is taken without lawful authority, the inference is strong that the taker means to use it improperly.—*Morgan and Macpherson*

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session

Charge—I (Name and office of Magistrate &c) hereby charge you (name of accused) as follows—

That you—on or about the—day of—at—without lawful authority, took out of the mint of—which is lawfully established in British India a certain coining tool (or instrument), to wit—and thereby committed an offence punishable under s. 245 of the Indian Penal Code, and within the cognizance of the Court of Session or High Court)

And I hereby direct that you be tried by the said court on the said charge

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a

term which may extend to seven years, and shall also be liable to fine

Notes—The coin made lighter, or its composition altered, "fraudulently" or "dishonestly". The act of debasing, or lightening the weight, if circumstances,—as by silver debased coin or purpose may be inferred from the person. A more recent Queen's coin—

Proceduro—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate, or Magistrate of the first class.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine

Proceduro—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class

249 Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine

Notes—The operation, whether of gilding, or silvering, or washing, etc., must, it seems, be of such a kind and so far completed, that the coin bears the appearance. The evidence must show the intention that the altered coin will be observed and used. The offence is not proved unless it can be proved. And in fact a description of the coin resembling or corresponding to the altered coin. The act of altering may be proved by evidence that coin so gilded, etc., was found in the prisoner's house or had been procured there, and that the wash or

Notes—The person punished is he who, not being a dealer in debased or altered coin, but having such coin in his possession, passes it off, or attempts to pass it off to others. By Act III of 1905, coins of certain denominations are made legal tenders provided they have not been diminished below a certain weight. It will be observed that the Code does not make the circulation by innocent holders of coin which has been debased or reduced below its proper weight an offence, when those holders are unaware that it has been so debased or reduced. It is an offence to pass such coin only when the person passing it knows that it has been diminished or altered by one of the operations which previous sections have made punishable—*Morgan and Macpherson*

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first class

The remaining sections of this chapter provide for the punishment of offences relating to certain Government stamps. The stamps protected by these provisions seem to have little in common with coin, except that both may be said to be stamped and issued by the authority of Government. These stamps are in truth nothing more than impressions upon paper, parchment, or any material used for writing, made by Government or its officers, for the purpose of revenue, or in payment for service rendered. To avoid ambiguity for the use of this word 'stamp' it should be observed that it is used throughout the following sections to designate, not the instrument by which a particular impression is made nor the paper or other material upon which it is made, but the impression itself,—the mark set upon the paper or other material. The Government stamps to which those sections relate, being stamps from which the Government derives a revenue, or which are issued for revenue purposes, are quite distinct from stamps used by Government for other purposes, as stamps affixed to or impressed on property, denoting that it belongs to the Government—*Morgan and Macpherson*

255. Whoever counterfeits, or knowingly performs any part

Counterfeiting Government stamp. of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Performs any part of the process.—The impression and not the die is meant. It seems that some part of this impression must be, if not completed, yet sufficiently complete to shew the intention—*Morgan and Macpherson*. The passing off of an one anna stamp as one rupee stamp is not counterfeiting an one rupee stamp, 2 W. R. 65

Procedure—Cognizable—Warrant—Bailable—Not compoundable—
Tribable by Court of Session.

Charge—[*(name and office of Magistrate, etc)* do hereby charge
you *(name of the accused)* as follows :—

That you—on or about the—day of—ar—counterfeited (or knowingly
performed any part of the process of counterfeiting, to wit—) a certain
stamp issued by Government for the purpose of revenue, to wit—and
thereby committed an offence punishable under s 255 of the Indian
Penal Code and within the cognizance of the Court of Session (or High
Court)—And I hereby direct that you be tried by the said Court on the
said charge

256. Whoever has in his possession any instrument or
material for the purpose of being used,
having possession of instrument or material for counterfeiting Government stamp or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes.—Here the punishment is directed to the offence of attempting or preparing to counterfeit. The possession of any instrument by which the counterfeit stamp impression is made, with a criminal intention, or even the possession of any material with the like intent is punished. *Morgan and Macpherson.*

Instrument—may denote a die or similar instrument, the mere possession of which, if not satisfactorily accounted for, may prove an intention to use it for the purpose of counterfeiting.—*Ibid.*

Material for etc.—may include the paper on which, or some one of the ingredients (in a more or less forward state of preparation) whereby the impression is made. The possession of such materials can of course be punishable under this clause only where the criminal purpose is established to the satisfaction of the Court.—*Morgan and Macpherson.*

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

Making or selling instrument for counterfeiting Government stamp

Proceduro—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

258. Whoever sells, or offers for sale, any stamp which he knows of has reason to believe to be a counterfeit of any stamp issued, by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant.—Bailable.—Not-compoundable—Triable by Court of session

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished, with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Notes—Alteration of used stamps so as to resemble genuine unused stamps amounts to counterfeiting within section 28 of the Indian Penal Code and the stamp vendor who does so, is guilty of an offence under s. 200 I. P. Code. 60 Ind. Cas 785—22 Cr. L. J. 289.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

261. Whoever fraudulently, or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been

used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—
 —Triable by Court of Session, Presidency Magistrate or Magistrate of the first class

262 Whoever fraudulently, or with intent to cause loss to the Government, uses for any purpose a stamp known to have been stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Gist of the offence—It is incumbent on the prosecution, where, the person is charged under this section, to bring home to him, not only that he used the stamp with the knowledge that it had been before used, but also that he used it fraudulently or with intent to cause loss to the Government. It may be assumed, if s. 37 of Act 1 of 1861 is read as stamps the meaning of the Penal Code. Hence the person charged may have been ignorant of the stamp being used for the purpose of revenue, or that he was defrauding the Government under this section.

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—
 —Triable by Presidency Magistrate or Magistrate of the first or second class

263. Whoever fraudulently, or with intent to cause loss to the Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—
 —Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Prohibition of fictitious stamps, **263A. (s) Whoever—**

- (a) makes, knowingly utters, deals in, or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or
- (b) has in his possession, without lawful excuse, any fictitious stamp, or
- (c) makes, or, without lawful excuse, has in his possession any die, plate, instrument, or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp, may be seized, and shall be forfeited.

(3) In this section "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263 (both inclusive), the word "Government," when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall be deemed to include any law to administer Her Majesty's dominions, or in any foreign country.

Legislative changes—Section 263A has been added by Act III of 1895, s. 2.

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first class

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent uses of false instrument for weighing

Scope of the chapter.—The offences punishable by this chapter are not defined with reference to any precise standard of weight or measure established by law. A false weight or measure here signifies that, —taking the law or the ordinary usage of the place, or the common understanding of the parties to have fixed on a certain known instrument of weight or measure, with reference to which two persons deal together, —the false dealer by decent substitutes another weight or measure, in order to defraud. The intention to defraud, or that the false weight or measure shall be used by other persons in order to defraud, is an essential part of the offence. The balance or scales, weights, etc., used may be and are probably often of the rudest construction. When their defects are visible to a purchaser, and there is no attempt to conceal them, there can be no reason for imputing an intention to defraud. On the other hand, the use of a false balance artfully contrived to elude detection, carries with it a strong presumption that it is used in order to defraud — *Morgan and Macpherson*. The sections relating to weights make no mention of standard weights, *In every place there are wellknown customary weights* and if any resident of the place or other person, knowing that a weight is less than the customary weight which it purports to be, uses the weight dishonestly he commits a fraud and may be punished under this chapter. L. B. R (1893—1900) 354. Intention is an essential part of the offence. 18 W. R Cr. 7.

Procedure—Non-cognizable—Summons—Bailable—Not compoundable—Presidency Magistrate or Magistrate of the 1st or 2nd class and is triable summarily.

Charge—*I (name and office of Magistrate, etc) hereby charge you (name of accused) as follows:—*

That you—on or about the—day of—at—fraudulently used a certain instrument for weighing, to wit—knowing the same to be false at the time of using it, and thereby committed an offence punishable under s. 264 of the Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge

Intent—Where the accused was charged under this section, with fraudulently using a false weight, the weight being a five seer weight and being one tola or one rupee short held that the weight in question cou

not be regarded as a false weight in the sense of this section.—A. W. N. 1883, 224.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity, as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Notes—Where no standard is prescribed, it is clear that no presumption of fraud can arise and a conviction under this section cannot be sustained U. B. R. 1908, 3rd Cr. Penal Code 17—9 Cr. L. J. 415. A conviction under this section cannot be maintained where there is no complaint by a purchaser. 38 P. W. R. 1908 Cr.—9 Cr. L. J. 4. No offence is committed where the weights have been used openly and ignorantly. 1 Weir 233. Where an accused person, a butter milk seller sells butter milk by means of an unstamped measure, a conviction under this section is not maintainable unless the evidence discloses fraud or falsity of the measure. 1 Weir 223. To ascertain whether a measure is false or not, the only proper test to apply is that of measure, and the same article must be measured in each case, and proof should be adduced that this has been done. The weight of the grain that a measure is found to hold is no evidence of its capacity as compared with that of another measure, unless the very same grain is used. Rat. Un Cr. C. 989. Selling liquor in a glass which is not of prescribed measure is not an offence under this section. Rat. Un Cr. C. 386. Seller must take proper care to see that the weights are free from defect. 1 Weir 225.

Procedure.—Not-Cognizable.—Summons.—Bailable.—Not-Compoundable.—Triable by Presidency Magistrate, or Magistrate of the first or second class and is triable summarily.

266. Whoever is in possession of any instrument for weighing or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent intention.—A fraudulent charge should be charged and proved. 1 B. H. C. Cr. 181. As in the case of a false coin, a weighty circumstance of suspicion is by this section made part of the definition of an offence. It is the intention that the false instrument shall be used to defraud, that is material. The proof of such intention must, as

in other cases, be made out to the satisfaction of the court. The mere possession of the false instrument, if such possession can not be satisfactorily explained and accounted for, is sufficient ground for presuming an intention to use it fraudulently—*Morgan and Macpherson*. A person who represents himself, as using a measure of a particular standard, is bound to see that the measure he uses is correct according to that standard. 1 Weir 225 To support a conviction under this section, it is not enough to prove the mere possession of scales or their use, with a string not accurately tied at the centre of the beam, but which can be shifted at any time and may some times have been accurately tied. It is necessary to prove that the accused knew the scales to be false and intended to use them fraudulently. Rat-Un Cr. L 514 = Cr Rg. 36 of 1890 A necessary ingredient of an offence under this section is fraudulent intent. 15 A L J 897

Procedure—Non-Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first class or second class and is triable summarily.

267, Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Procedure—Non-Cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or second class

CHAPTER XIV.

ON OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

268. A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily occasion to use any public right

A common nuisance is not excused on the ground that it causes some convenience or advantage.

section 1 Weir 242

Scope.—"To constitute a public nuisance there must be some act or omission which is so annoying, not merely to an individual but to the public at large or to the neighbouring community, as to render the place dangerous or otherwise offensive. There are many instances when done in populous localities or not deemed deserving of punishment when done in a retired locality. Suppose a house in the country is used for the purpose of carrying on a dangerous trade or one which renders the air unwholesome or disagreeable to the senses;—or suppose a private way leading to a house is obstructed or made dangerous,—the injury or annoyance, if it affects only the residents of two or three other houses, will not necessarily make this a public nuisance.

"It is not easy to say how many persons must suffer, or be in danger of suffering, to make a nuisance public or common. But it seems the thing done, though the general public need not be actually injured by it, must be of a nature to produce injury, annoyance, etc., to all and must do so in fact to all who are in the particular locality or otherwise within the influence of the act. He who indecently exposes his person to a single individual, though it be in a public place, yet not within public view, is not punishable for a nuisance. But if the exposure were to a large number of persons, it would be a public nuisance. If they had looked, it would be a nuisance. The nuisance may be created by neglecting duty requires to be done. For example, by keeping a house, etc., in a filthy state, neglecting ordinary precautions, during repairs, etc. In the latter case the omission must be "illegal." See also 21 A. L. J. 772.

"The following are instances of public nuisances: obstructions of high ways, navigable rivers, and the like injuries to such ways and places; neglect or refusal by those whose duty it is so to do, to keep them in repair; the carrying on, in populous localities or near a high way, of trades or occupations injurious to health or comfort; making great noises to the disturbance of the neighbourhood; keeping large quantities of gun powder in populous places to the danger of the public safety;—and other acts of a similar tendency.

"The latter clause of the definition seems to comprehend such nuisances

as obstruction to public roads navigable rivers, etc. In such nuisances, it does not seem to be essential to show actual injury or annoyance etc., to persons who use the road. It is sufficient if the obstruction is calculated to injure all who may choose and have a right to use the way. And the person causing the obstruction or other nuisance, cannot excuse it by showing that, in other respects, and on the whole, his act has worked some advantage or improvement,—as that he has opened a better way, or has improved the navigation of a river etc. But in considering whether an act or omission which causes injury etc., in a slight degree, or in some extreme cases only, and as an uncertain and rare consequence, amounts to a public nuisance, the general exceptions contained in section 95, must be remembered.

"The general punishment provided for committing a public nuisance is not applicable to acts which are otherwise expressly made punishable. This chapter contains special provisions, for the punishment of many acts as those above mentioned and to those thus specifically dealt with, the section 29 is inapplicable—*Morgan and Macpherson*. Allowing prickly pear to spread on to a public road is a public nuisance A I R 1928 Mad. 1235

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both

Comment—To support a conviction under this section, it must be established—
the accused person spread the infection
the accused person spread that disease. 7

U. B. R. C. 5 "If a man is attacked by a contagious and deadly disease and needlessly goes abroad with it in the public way, or if a person carries out a child so infected, he does what he may be supposed to know to be likely to spread the infection. And unless some lawful occasion or reason for his conduct can be shown as that the sick person had been directed to be removed to a Hospital, and that the removal was performed with due caution, the act will be an offence punishable under this section"—*Morgan and Macpherson*. Soaking paddy in dirty water is not an offence under this section 1 Weir 227. In order that there may be a conviction for inoculation under this section, it must be shown that the act is done, if not unlawfully, at least negligently and the mere performance of inoculation is not punishable under above section. U. B. R. 11897-1901 Vol. I, 280. see also 1 W 226 Knowledge or belief that an act is likely to spread

... of the act to ... a conviction
... compoundable
... first or second
class

Charge.—I (*name and office of Magistrate*) charge you (*name of the accused*) as follows:—

That you, on or about the——day of——at——unlawfully (or negligently) did an act to wit——knowing (or having reason to believe) that the said act was likely to spread infection of——a disease which is dangerous to life and that you thereby committed an offence punishable under s. 269 of the Indian Penal Code and within my cognizance

And I hereby direct that you be tried on the said charge.

270. Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—The offence here is an aggravation of that which is punished by the preceding section. The malicious intention to spread the infection is part of the definition. Suppose a person having small pox is exposed in a public street, either to excite charity, or because, through fear, he has been removed from a house where he was lodged,—the offence committed by those who exposed him would not probably come within this section. *Morgan and Macpherson.*

Procedure—Cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine or for regulating the intercourse of vessels in a state of quarantine with the shore or with places where, shall be punished with imprisonment of either description for a term which may extend to—

Procedure—Non-cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Notes—The mixing of anything with food or drink, so as to render it unwholesome for the use of man or of a beast, is an offence under s. 272, in the absence of anything to show that such milk was rendered noxious as food or drink by the admixture of water. *L. B. R. 153*. The expression "noxious as food" means unwholesome as food or injurious to health and not repugnant to one's feelings. *21 A. L. J. 875=9 O and A. L. R. 982, 83 Ind. Cas. 1004=26 Cr. L. J. 270=A. I. R. 1924 All 214*

Procedure.—Non-cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered noxious as food or drink, or has become noxious, or is in a state unfit for food or drink, knowing or, having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Noxious.—The word "noxious" means harmful to health or unwholesome. In the absence of evidence to show that the adulteration of ghee with vegetable oil was such as to render it noxious in the above sense, such adulteration cannot be held to constitute an offence, under this section. *12 C. W. N. 608, 26A 387, 28 A. 312.*

Scope.—Whether it has been adulterated so as to become noxious, or has become unfit for food or drink by decay, etc., or has never been fit for food,—a sale or attempt to sell any such article by one who knows its noxiousness, is an offence if he offers it for sale as food or drink. The purpose for which the sale is made is all important. Suppose meat to be sold as food for dogs and not for man, it may be that it would not be unfit for the purpose intended, although not sufficient good for the food of man.—*Morgan and Macpherson. See 3 P. R. 1908 Cr.* A person can not be convicted of an offence

section for selling wheat containing a large admixture of extraneous matter, e. g. dust, wood, matches, charcoal, black-seeds, etc. 6 Bom. L. R. 520=1 Cr. L. J. 618. Toddy in which worms have germinated is noxious and unfit for drink 1 Weir 228. In order to convict a person under this section the offence must be complete. 1 Weir 227. Exposing for sale milk mixed with water is not an offence under this section as the mixture is not noxious or injurious as food or drink. 89 Ind. Cas. 961=26 Cr. L. J. 1441, see also 1 Weir 228

Proceduro—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medical purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or second class.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either

description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both,

Corrupts or fouls.—The expression must be taken in its literal sense and not in its artificial sense 13 C. P. L. R. 92, 2 Bom. L. R. 1078

Public spring—The term "public spring" does not include a continuous stream of water running along the bed of a river. 4 M 229—1 Weir 230, Rat. Un Cr C 215, Rat. Un Cr. 14. 2 C 383, 6 Bom. L. R. 52 The water must be for public use. Springs and reservoirs are alone mentioned The provision therefore does not extend to the waters of rivers, etc, although they may ordinarily be used for drinking and other domestic purposes—*Morgan and Macpherson*.

The water of a nullā does not constitute a "public spring" Rat Un. Cr. C. 963

Voluntarily corrupts etc.—In such acts as suffering the washing or refuse of an offensive trade to flow into a tank of drinking water, or washing skins etc, there cannot but be a voluntary fouling. (*Vide* section 39)

The purpose for which the water is ordinarily used must be considered in determining whether there has been voluntary corrupting within the meaning of this section *Morgan and Macpherson*.

There are two questions to be considered with reference to a charge under this section. The first is, whether the water of the tank has been ordinarily used for drinking purposes, the second, whether the accused voluntarily corrupted or fouled the water so as to render it less fit for drinking 1 Weir 229 Mere angling in a tank is not an offence under this section. 1 Weir 231(1), see also 1 Weir 231 (2) The mere bathing in a tank, not set apart by any lawful order for bathing purposes, without anything further, is not an offence under this section. 1 Weir 228. Cultivating paddy in the bed of a tank used by the public for drinking purposes is a nuisance and is punishable under s 277 and 1 Weir 229 A conviction under this section is proper for spitting in public well 13 N L R. 68

section for selling wheat containing a large admixture of extraneous matter, e. g. dust, 520 = 1 Cr. L. J. 61

and unfit for drink

section the offence

milk mixed with w.

is not noxious or injurious as food or drink. 89 Ind. Cas. 961 = 26 Cr. L. J. 1441, see also 1 Weir 228

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medical purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or second class.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Procedure.—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either

description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Proceduro—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both,

Corrupts or fouls—The expression must be taken in its literal sense and not in its artificial sense 13 O P. L. R. 92; 2 Bom. L. R. 1078

Public spring—The term "public spring" does not include a continuous stream of water running along the bed of a river. 4 M 229—1 Weir 230, Rat Un Cr C 215, Rat Un Cr 14 2 C 383, 6 Bom. L. R. 52 The water must be for public use Springs and reservoirs are alone mentioned The provision therefore does not extend to the waters of rivers, etc., although they may ordinarily be used for drinking and other domestic purposes—*Morgan and Macpherson*

The water of a nullah does not constitute a 'public spring' Rat Un. Cr C. 963

Voluntarily corrupts etc.—In such acts as suffering the washing or refuse of an offensive trade to flow into a tank of drinking water, or washing skins etc, there cannot but be a voluntary fouling. (*Vide* section 39)

The purpose for which the water is ordinarily used must be considered in determining whether there has been voluntary corrupting within the meaning of this section *Morgan and Macpherson*.

There are two questions to be considered with reference to a charge under this section. The first is, whether the water of the tank has been

whether the accused
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a tank, not set apart by any lawful order for bathing purposes, without anything further, is not an offence under this section. 1 Weir 228.
Cultivating paddy in the bed of a tank used by the public for drinking purposes is a nuisance and is punishable under s 277 and 291.
1 Weir 229 A conviction under this section is proper for spitting in a public well 13 N L R. 68

Proceduro.—Cognizable—Summons—Bailable—Not-compoundable—
—Triable by any Magistrate.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Scope—In several of the subsequent sections of this chapter, particular acts done so rashly or negligently as to endanger human life or the personal safety of others or as to be likely to cause hurt, are made punishable. In a latter chapter there is a general provision to the like effect (see section 336). The offences thus made punishable are complete although no personal hurt may be sustained. Where the rashness or negligence causes bodily pain ("hurt" or "grievous hurt"), it is punishable under sections 337, 338. Where it causes death, the offender may be guilty of culpable homicide which will amount to murder if the act is of that imminently dangerous and reckless kind which is contemplated by section 300—*Morgan and Macpherson* p 209.

Proceduro --Cognizable--Summons--Bailable --Not-compoundable--
Triable by any Magistrate.

Notes—The act of performing the offices of nature in front of one's door-step in a public street is not an offence under this section. Rat. Un. Cr. C 200.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Essentials.—To sustain a charge under this section it must be shown that there was rashness or negligence on the part of the rider or driver. 1 Weir 232 ; 1 C. P. L. R. 112. To constitute an offence under this section, it is not necessary that actual hurt should be caused to a human being ; it is sufficient if the accused's act is likely to cause such hurt or injury, 2 P. W. R. 1912 Cr.

Scope.—This offence against the public safety is completed although the rash or negligent act results in no injury to life or property. The cases contemplated in this and the following sections seem to be those in which there is indifference or rashness in performing a lawful act, and therefore criminality, but not in the same degree as where there is a determination to do wrong. If a man is so rash as to take on himself

an office or duty requiring skill, which he cannot adequately discharge, his conduct has in it a taint of criminality, and it will be no defence to shew that he acted to the best of his ability—*Morgan and Macpherson*. Simply driving a cart the bullocks of which had no strings does not constitute an offence under this section. Rat. Un. Cr. C. 19. In case of rash driving the driver is liable. 14 W. R. Cr. 32. Rash driving is punishable even when there is no person on that part of the road. 19 B. 715. Rash driving on a public road causing thereby collision with, and injury to the horse of, another carriage is punishable under this section. 13 P. R. 1900 Cr. Where an accused was found guilty of rash and negligent driving under this section, he cannot also be convicted for mischief under s. 427. 5 S. L. R. 263—15 Ind. Cas. 808—13 Cr. L. J. 536. Where a person allowed his cart to proceed unattended along a road and run over a boy who was sleeping on the road, he could not be convicted under this section. Rat. Un. Cr. C. 198. Where a person is driving on the wrong side of the road at the time of collision, he must satisfy the court that he was not rash or negligent in driving on that side. 23 Bom. L. R. 358—61 Ind. Cas. 52—22 Cr. L. J. 324, see also 84 Ind. Cas. 253—26 Cr. L. J. 253—16 S. L. R. 147. Where an offence falls both under this section or under s. 5 of the Motor Vehicles Act, the trial of the accused under either is legal. 23 A. L. J. 790—26 Cr. L. J. 1254—88 Ind. Cas. 998—A. I. R. 1925 All. 798, see also 23 A. L. J. 790—26 Cr. L. J. 1254—88 Ind. Cas. 998. Where a foot passenger is injured owing to the rash and negligent driving on a road which is not narrow, there being ample space for the driver to have passed the passenger and after having knocked down leaves him where he is, the driver is guilty of a serious offence punishable under ss. 279 and 337 I. P. Code. 28 Cr. L. J. 894—A. I. R. 1924 Oudh 441—4 O. W. N. 768—104 Ind. Cas. 910.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Conviction.—To support a conviction under this section, it must be proved that the immediate cause of the accident was rashness or negligence on the part of the navigator 15 C. W. N. 835. It is the primary duty of steam vessel to keep out of the way of vessels lying at anchor. The fact that a launch runs into a cargo boat at anchor is in itself *prima facie* evidence of negligent navigation 12 Cr. L. J. 582—12 Ind. Cas. 846—4 Bur. L. T. 140. To prove the offence of rash and negligent navi-

gation under s. 280 I. P. Code it is not sufficient to prove that the accused navigated the ship in an extremely slovenly manner, it is necessary to prove that he navigated it so as to endanger human life or in a manner which was likely to cause hurt or injury or other persons or property. 19 S. L. R. 136—A. I. R. 1925 Sind. 284—26 Cr. L. J. 1026—87 Ind. Cas. 917

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

281. Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both,

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

282. Whoever knowingly or negligently conveys, or causes to be conveyed, for hire, any person by water, in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Scope—Boatmen plying for hire on rivers, at ferries, etc., whose boats are overloaded, or are not in a fit condition safely to carry passengers, are criminally responsible for their neglect. It should be proved that there was risk to life caused, and the circumstances from which knowledge or negligence is to be inferred should be shewn—*Morgan and Macpherson*.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Gist of the offence.—To warrant a conviction it must be established that the way is a public way and the act of the accused

has caused danger, obstruction, or injury to some person. 25 C. 275; 1 Bom. L. R. 517; 11 C. L. R. 462, 25 Cr. L. J. 707=81 Ind. Cas. 195 Where there is no proof of obstruction caused to a particular person by the act of the accused, a conviction under this section cannot be sustained 1 Weir. 232.

Scope.—Generally a man is bound to use his property so as not to injure others. The offence here punished is the public nuisance of causing obstruction, etc., in a public way or navigable river or canal. There must be some negligent act or improper omission. Suppose a boat sinks in the navigable channel of a river and causes obstruction or danger,—if the boat was lost by the mere negligence of those who had charge of it, they will be punished under this section. It seems from the terms of the section that there must be evidence that some person has actually suffered injury or been obstructed, etc.—*Morgan and Macpherson*. Under this section actual obstruction to specific individual requires to be proved 38 M. 305=29 Ind. Cas. 832. Ordinarily, every shop-keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public 13 Bom. L. R. 209=10 Ind. Cas. 804=12 Cr. L. J. 258=35 B. 368 A person cannot be convicted under this section for obstruction by his contractor, where he had not authorised the obstruction. 19 A. L. J. 125=61 Ind. Cas. 54=22 Cr. L. J. 331.

Procedure.—Cognizable.—Summons.—Bailable.—Not-compoundable.—Triable by Presidency Magistrate or Magistrate of the first or second class.

284. Whoever does, with any poisonous substance, any act Negligent conduct with in a manner so rash or negligent as to respect to poisonous endanger human life, or to be likely to substance, cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both

Notes.—Suppose a deadly poison is left exposed in a place usually frequented by children. This, like other sections of the chapter, proceeds on the principle that carelessness, when sufficient in degree, is to be regarded as criminal notwithstanding that it may not have occasioned hurt. In this and the following section, the offences defined are not necessarily of the nature of public nuisances. For the offence may be

committed in places where persons do not congregate together. It is sufficient that the life of a single person may be put in danger—*Morgan and Macpherson*.

Procedure.—Not cognizable—Summons—Bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

What constitutes an offence.—In order to support a conviction under the above section, the following matters must be proved—(1) rash or negligent dealing with fire, (ii) this rashness or negligence must be such as (a) endangers human life, or (b) is likely to cause hurt or injury to any other person, or (iii) there must be found intentional or negligent omission in dealing with fire to guard against probable danger to human life. L. B. R. (1872-1892), 411.

Punishment.—It will be observed that the punishment in this and the subsequent sections is directed against an act which may be dangerous or cause hurt to human life. If the expression "injury to any other person" is to be understood to mean not only a personal injury but any injury (see section 44) a risk of danger to property will be sufficient to make a man criminally responsible for his negligence—*Morgan and Macpherson*.

The owner of a house in which a fire breaks out cannot be convicted under the above section, without proving actual carelessness or an illegal omission in the owner, from which rashness or negligence can be inferred. L. B. R. (1872-1892), 134, see also L. B. R. (1872-1892) 569. In order to sustain a conviction under the above section, there must be evidence of rashness or of negligence of the accused. L. B. R. (1872-1892) 237; 1 U. B. R. (1902-1903) Penal Code, 7. This section does not render it necessary to show danger to human life, it is sufficient to prove likelihood of injury to property. Rat. Un. Cr. C. 134. This section has no application where the act of the accused is wilful and not rash or negligent. Rat. Un. Cr. C. 126.

Procedure -- Cognizable -- Summons -- Bailable -- Not-compoundable --
 Triable by any Magistrate

286. Whoever does, with any explosive substance, any act so
 Negligent conduct with rashly or negligently as to endanger human
 respect to explosive subs- life, or to be likely to cause hurt or injury
 tance, to any other person,

or knowingly or negligently omits to take such order with any
 explosive substance in his possession as is sufficient to guard against
 any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a
 term which may extend to six months, or with fine which may extend
 to one thousand rupees, or with both.

Knowingly.—If a person omits to take precautions in respect of
 explosives in his possession as is sufficient to guard against any probable dan-
 probability of danger resulting
 , that which, under this section,
 person omits to take such precau-

tions without such consciousness, is liable, by reason of his negligence, if
 he "has not exercised the caution incumbent on him" and which, if he had
 exercised it could have created in him the consciousness that his omission
 was likely to cause danger *Queen Empress v. Chen Chugadu*, 8 M. 421
 = 1 Weir 233. The first part of the section is not confined to cases where
 the explosive is in possession of the accused at the time of the injury.
 1 Weir 236

Explosive substance.—A revolver is not an explosive substance
 within this section 1 Weir 235

Scope of the Section.—Keeping a large quantity of gunpowder or
 fire works, etc., in a popular place, even though they be not negligently
 kept, may perhaps constitute an offence within this section. Any explo-
 sive substance kept in the possession of a person who knows its qualities,
 in whatever place it may be kept, should be guarded with a care propor-
 tionate to the risk of danger to human life which it may occasion under
 the first part of the section, throwing fire works in a frequented place
 where there are people on foot or horse back etc. may be punishable —
Morgan and Macpherson The causing of hurt by negligence in the use
 of a gun would fall within the purview of s 337 rather than s. 286 of the
 Indian Penal Code. A. W. N. 1906, 91 = 3 Cr. L. J. 363 = 3 A. L. J. 332
 = 28 A. 464

Procedure -- Cognizable -- Summons -- Bailable -- Not-compoundable
 -- Triable by any Magistrate.

287. Whoever does, with any machinery, any act so rashly
 Negligent conduct with negligently as to endanger human life,
 respect to machinery, be likely to cause hurt or injury to

other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Notes.—When an owner of machinery employs a competent man to work it and leaves him unfettered, he cannot be held criminally liable for any accident due to the errors of his employee. 8 P. R. 1906, Cr.

Under his care.—The words "or under his care," which do not occur in the preceding sections, are probably inserted here to include Engineers, etc., who may be in charge of the machinery. The law requires that there shall be a competent knowledge of their duty in such persons, and the words "knowingly or negligently" must be interpreted accordingly—*Morgan and Macpherson*.

Proceduro—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

288. Whoever, in pulling down or repairing any building, Negligent conduct with knowingly or negligently omits to take such respect to pulling down or order with that building as is sufficient to repairing buildings. guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Such order as is sufficient.—The degree of caution is in proportion to the apparent necessity for it. If the build-
there is no need of
he suff
are do
wholly
etc, si
sing from it

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable

danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Gist of the offence—In order to convict a person of an offence under this section, it must be established in the affirmative that the accused knowingly or negligently omitted to take such order with the animal in question as was sufficient to guard against probable danger to human life or probable danger of grievous hurt from such animal. It should, therefore, be established in the affirmative that there was a probability that the animal would cause grievous hurt or danger to human life. 1 A. L. J 605; 1 Weir 237; 5 P. R 1904 Cr.; Rat Un. Cr. C 197; Rat Un Cr C. 606. Before the owner or keeper of an animal can be convicted under this section, for negligence with respect to his animal, it must be made out that the animal was known to be ferocious, and that it was negligently kept. L.B.R 1872—1892, 353. In case of animals naturally fierce, all persons acquainted with their habits are aware that danger to human life or risk of grievous hurt will be probable consequence of allowing them to be at large. 1 Weir 238, 1 Weir 237; Where the animal is not of such a description as is expected from its ferocity to endanger the persons of those whom it meets, the owner or person in possession of it will not be criminally liable, unless he knows of the ferocity of the particular animal, and neglects to take proper measures to prevent the risk of hurting from it.

Fierce and dangerous animals, such as bears, or dogs which are known to bite people, must be kept with a care proportioned to the risk of keeping them—*Morgan and Macpherson*, see also L. B. R. (1872—1892) 353; 3 N L R. 90

Danger of grievous hurt.—If there is a risk which falls short of danger to life or of grievous hurt, such as the risk of being slightly bitten, it will not be sufficient—*Morgan and Macpherson*

Where a driver left carriage unattended, *held*, that in so doing the accused was guilty of knowingly or negligently omitting to take such order with the horse in his possession as was sufficient to guard against the probable danger of grievous hurt from such animal, which is an offence under this section Rat Un Cr C. 163—Cr Reg. 24—4—1881 The presence of stray cattle in a road at night can not be said to involve probable danger to human life or of grievous hurt under this section. 1 Weir 238. The essential ingredient of an offence under this section is that there should be probable danger to human life or limb 18 Bom L. R 682—17 Cr. L J 383 Where owing to the negligence of the accused his dog bit the complainant in his arm causing three incised wounds the accused was guilty under this section. 2 Bur L. J. 8—1923 Rang. 147.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Scope.—Under this section of the the Penal Code, injury, danger, or annoyance may be caused to any person enjoying the enjoyment of property of a portion of the public. *I. R. Cr. 70; 1 C. P.*

not per se a public nuisance. But where gambling is carried on in a public place or where there is evidence to show that a public house is maintained as a common gaming house for gain, or that a crowd of disorderly persons was assembled that caused annoyance to persons living in the neighbourhood, in such a case gambling is a public nuisance. *1 Weir 239; 1 Weir 242.*

Skinning of an animal which dies a natural death does not in itself constitute a public nuisance. *12 A. L. J. 349*

Object of the section.—Many sections of this and other chapters provide a punishment for various specific public nuisances. This section

Liability for acts of agent, etc.—A man may be guilty of a nuisance by act of his agent or servant. He may be personally ignorant of the particular act or omission which causes the injury, annoyance etc., and may have no intention to cause it. But if those whom he authorises to manage his property, acting within their general authority, occasion

seems who is a criminally liable for its continuing nuisance. *Morgan and Macpherson.*

payment imprisonment

without any of causing

public nuisance. 10 A. L. J. 362 = 13 Cr. L. J. 830 = 17 Ind. Cas. 574.
 Refusal to pay difference in Rail way fare where the accused travelled in a
 higher class does not constitute an offence under this section 8 B. H. C.
 Cr. 9. An accused can not be convicted under this section for acts of
 third parties in his land. 2 Ind. Cas. 424 = 10 Cr. L. J. 10 The mere
 presence of a public nuisance at the front of a house is not an offence
 if the nuisance is not a hair-act, but a Ver-
 242 The presence of a public nuisance in a place
 is not an offence if the nuisance is not a tray
 tion or a public nuisance in this
 place.

Procedure—Non-cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction after injunction to discontinue, not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months or with fine, or with both.

Elements of offence—In order to support a conviction for the offence of continuance of a nuisance after an injunction to discontinue under the previous section, it is necessary that the order of the Magistrate forbidding the continuance of the nuisance, or evidence of notice of such a character as to make plain the precise terms of the order and notice, be recorded in the case. Rat Un. Cr. C 295

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

292. Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation or for purpose of sale, hire, distribution, public exhibition or circulation makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of

the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section or that any such obscene object can be produced from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception—This section does not extend to any book, pamphlet, writing drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose

Legislative changes.—This section has been added by Act 8 of 1925.

Test of obscenity.—The test of obscenity with reference to a charge of obscenity is not whether the publication has a tendency to produce a tendency of the matter are open to such immoral this kind may fall if a id calculated to produce a the minds of the persons scene publication which it uestion whether a publica- if a publication is in fact or distributing the same is innocent.' 28A. 100;

see also 15 BOM. L. R. 307; 15 B. L. R. 620, 62 Ind. Cas. 401—22 Cr. L. J. 513; 22 M. L. T. 169—5 L. W. 237; 20 B. 193, 3A. 837; 22 Cr. C. J. 413.

Exception.—The tendency of a religious publication is not to deprave or corrupt the morals of persons and therefore a religious work is not obscene within the meaning of this section. 39 C. 377—15 C. L. J.

161 But a passage which is not obscene in its place in a religious book may become so by being published in a journal sold to the public. 5 P. R. 1917 Cr.

Charges—When a charge is brought against an accused under this section or section 294, it should always specify the words or representations alleged to be obscene L B R. (1872-1892), 262 ; 1 C. 356.

Checks to conception—A book advocating checks to conception or explaining what apparatus helps such check, is not necessarily obscene. Rat. Un. Cr. C 620

The mere fact that a person is proprietor and publisher of a news paper does not render him criminally liable for any obscene advertisement or other matter inserted therein by his servants, in the absence of a distinct finding that it was put in by the order or owing to the negligence of the proprietor A W N 1890, 175 Advertisement containing word "asan" is not necessarily obscene A I. R. 1928 Pat 649.

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene objects as is referred to in the last preceding section, or offets or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Legislative changes.—This section is new and has been inserted by Act 8 of 1925.

Scope.—Here the offence is an aggravated one, because the object of such an offence is a person who is under twenty years of age and as such their minds are more open to immoral influences by such objects. Here a mere attempt is also made punishable like the substantive offence As regards the test of obscenity see the dictum of Lord Cockburn C. J in *Reg v. Hicklin* (L R 3 Q D B 360)—where he says "I think the test of obscenity is this whether the tendency of the matter corrupt those whose minds are susceptible of such impressions."

It is not at a book which may not be considered obscene in the case of an adult person may be considered obscene under this section because this section deals with youthful minds So far as professional men are concerned many objects should not be considered obscene, which in cases of ordinary people are considered obscene So in my humble opinion merely legal, medical and other scientific books should be exempt from the operation of this

the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section or that any such obscene object can be produced from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both

Exception—This section does not extend to any book, pamphlet, writing drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose

Legislative changes.—This section has been added by Act 8 of 1925.

Test of obscenity—The test of obscenity with reference to a charge of distributing obscene literature, is whether the tendency of the matter

is to lead corrupt thoughts, or to open the mind to such immoral influences as may fall. If a publication is calculated to produce a corrupt tendency in the minds of the persons to whom it is published, it is obscene. The tendency of a publication which it is calculated to produce is to be determined whether a publication is in fact

obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent.' 38A 100; see also 15 Bom L. R. 307; Rat. Un. Cr. C 620; 62 Ind Cas 401—22 Cr. L. J. 513; 22 M. L. T. 169—5 L. W. 237; 20 B 193; 3A. 837; 22 Cr. C. J. 413

Exception.—The tendency of a religious publication is not to deprave or corrupt the morals of persons and therefore a religious work is not obscene within the meaning of this section. 39 C. 377—15 C. L. J.

161. But a passage which is not obscene in its place in a religious book may become so by being published in a journal sold to the public. 5 P. R. 1917 Cr.

Charges—When a charge is brought against an accused under this section or section 294, it should always specify the words or representations alleged to be obscene L. B. R. (1872-1892), 262; 1 C. 356

Checks to conception.—A book advocating checks to conception or explaining what apparatus helps such check, is not necessarily obscene. Rat. Un. Cr. C. 620.

The mere fact that a person is proprietor and publisher of a news paper does not render him criminally liable for any obscene advertisement or other matter inserted therein by his servants, in the absence of a distinct finding that it was put in by the order or owing to the negligence of the proprietor A. W. N. 1890, 175 Advertisement containing word "asan" is not necessarily obscene. A. I. R. 1928 Pat 649

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

293 Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene objects as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both

Legislative changes.—This section is new and has been inserted by Act 8 of 1925

Soops.—Here the offence is an aggravated one, because the object of such an offence is a person who is under twenty years of age and as such their minds are more open to immoral influences by such objects. Here a mere attempt is also made punishable like the substantive offence As regards the test of obscenity see the dictum of Lord Cockburn C. J. in *Reg v Hicklin* (L. R. 3 Q. D. B. 360)—where he says "I think the test of obscenity is this whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall" So it appears that a book which may not be considered obscene in the case of an adult person may be considered obscene under this section because this section deals with youthful minds So far as professional men are concerned many objects should not be considered obscene, which in cases of ordinary people are considered obscene So in my humble opinion merely legal, medical and other scientific books should be exempt from the operation of it

section—where they are meant purely for the profession or written for the advancement of science

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

Obscene acts and songs. **294.** Whoever, to the annoyance of others—

(a) does any obscene act in any public place, or

(b) sings, recites, or utters any obscene songs, ballad, or words in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Legislative changes:—This section has been substituted by Act 3 of 1895 s. 3.

Proof.—A clear and specific allegation of the words and of the persons by whom they were uttered must be stated against the accused, prosecuted under this section. L. B. R. (1893—1900), 50, L. B. R. (1872—1892), 262, 1 C 356, but see 1 Weir 251

Annoyance.—Must be proved. L. B. R. (1872—1892), 332.

Punishment—As to what punishment is sufficient vide, L. B. R. (1872—1892), 537, L. B. R. (1872—1892), 309; 2 Bur. L. J. 98. Where an accused has been once tried by a village Headman he cannot be tried again by a Magistrate 2 Bur. L. J. 149.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by any Magistrate;

294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by

Keeping lottery office.

Government shall be punished with im-

prisonment of either description for a term which may extend to six months, or with fine, or with both.

¹ And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

Legislative changes.—This section has been inserted by the Indian Penal Code Amendment Act (27 of 1870) s. 10.

Annoyance or injury.—In order to obtain a conviction under this section, it is necessary to give evidence of actual annoyance or injury to the public. L. B. R. (1872—1892) 59.

Lottery.—Where a fund was in its nature a lottery, held that the mere fact of its being registered would not exonerate the persons carrying on the business from liability under s., 294A. 1 Weir 252; see also 1 Weir 251. The actual drawing of lottery is punishable. 17 P. R. 1910 Cr. The words "any such lottery" in this section mean any lottery not authorised by Government. 10 B 97. An agreement to secure payment under *kuri* is not illegal under this section. 22 M. 212. It is not necessary for an offence under the first part of this section that the place should be kept solely for the purpose of drawing a lottery. 9 Bur. L. T 124=17 Cr L J. 143=33 Ind Cas 319. The principle underlying a lottery is that there should be a distribution of prizes determined solely by chance. 35 P R 1917 Cr=33 P 'W R 1917 Cr. Where it is shown that the accused kept an office where they carried on the necessary preliminary work for running a lottery and received the lottery moneys and which they held out to the public as the place where the lottery would be drawn are guilty of an offence under this section. 16 L W. 757, 44 M. L J 595. Advertisement of unauthorised lottery is not an offence under this section 26 Bom. L. R. 968=1925 Bom. 26. But publication of terms for prizes on horses winning at Derby races is offence 27 Bom. L R 363=87 Ind. Cas. 516=26 Cr. L J. 980=A. I R, 1925 Bom. 243. A chit fund is not a lottery. 48 M. 661. A mere casual and gratuitous delivery of a lottery ticket is not necessarily the publication for a proposal within the meaning of section 294A. 27 Cr. L. J. 727=95 Ind. Cas. 313. The terms "goods" does not include immoveable property and the running of a lottery by which a ginning factory was to be raffled at five rupee tickets constitutes an offence under that section (1926) M W N. 949=A. I. R. 1927 Mad. 66. Where the accused enclosed five rupee notes in cigarette packets and published pamphlet setting out facts of his scheme the transaction although amounted to lottery but no offence under this section was committed. A. I. R. 1928 Bom. 550.

Procedure—Not cognizable—Summons—Bailable—Not compoundable—Triable by any Magistrate.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION,

Principle of this chapter.—The principle on which this chapter has

most superficial observation may convince us, or, as real a pain, and as acute a pain, as is caused by almost any offence against the person, against property or against character. Nor is there any compensating good whatsoever to be set off against this pain. Discussion, indeed, tends to elicit truth. But insults have no such tendency. They can be employed just as easily against the purest faith as against the most monstrous superstition. It is easier to argue against false hood than against truth. But it is easy to pull down or defile the temples of truth as those of falsehood. It is as easy to molest with ribaldry and clamour, men assembled for purposes of pious and rational worship, as men engaged in the most absurd ceremonies. Such insults, when directed against cortoneous opinions, seldom have any other effect than to fix those opinions deeper, and to give a character of peculiar ferocity to theological dis-sension. Instead of eliciting truth they only inflame fanaticism—*Morgan and Macpherson*. It is not intended by this chapter to make criminally punishable breaches of ritualistic observance committed by persons of any one creed against the canons of their own faith. 1 Weir 253

Cases.—A person cannot be punished under this section for unintentional pollution of well water. Rat Un. Cr C 979, see also 5 C. L. R. Cr. 20. The killing of a cow even if done with the intention of offending religious susceptibilities of others is no offence under this section. 10 P. R. Cr. 1918 = 1 P. W. R. Cr. 1898 = 44 Ind. Cas 330 = 19 Cr. L. J. 314 (F. B.) A person can not be convicted under this section for damaging mosque by placing rafters of his roof on the walls of the mosque. 3 W. & A. 189. Where a band of Mohammedans entered a Hindu temple section. 25 Cr. 150 25 Cr. L. J.

Procedure.—Cognizable.—Summons.—Bailable.—Not compoundable.—Triable by Presidency Magistrate or Magistrate of the first or second class.

Charge.—I (name and office of the Magistrate, etc.) hereby charge you (name of the accused) as follows.—That you, on or about the—day of —, at—, destroyed (or damaged or defiled) a certain place of worship, to wit—(or an object, to wit—) held sacred by—with the intention

of thereby insulting the religion of—(or with the knowledge that—are likely to consider such destruction damage, or defilement as an insult to their religion,) and thereby committed and offence under s. 295 of the Indian Penal Code etc.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention thereby of insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope—There is a distinction, not arbitrary, between objects which are objects of respect an even veneration and of objects which are held sacred; and such distinction appears to have been kept in view by the legislature 10 M. 126 The word "object" in this section is not limited to inanimate objects but includes animate objects, which are held sacred, as well as idols, relics or the like 27 P. R. 1884 Cr But see 17 C 852

Defile—The word "defile" must be taken to be used in the sense in which it is generally used with references to religious matters. It makes no difference that the guilty person is a worshipper of the temple which he has defiled. 1 Weir 256 See also 1 Weir 253. U B R. (1892-96) Vol 1. 198 The word defile cannot be confined to the idea of making dirty but also extends to ceremonial pollution 41 M 980 The mere defilement of a place of worship is no offence. 7 C. P. L. R. 45.

295 A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of his Majesty's subjects, by words either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious belief of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both

Legislative changes—This section has been inserted by Act XXV of 1927.

Notes—"The proposed new section 295 A is by far the most important provision contained in the Bill and we have examined it in the lights of such criticism as have been expressed since the Bill was introduced whether by the members of the legislature or of the general public and now proceed to set forth our conclusions in detail In the first place

... that the motive of the act "intentionally," does not suffice to constitute the offence, namely, the religious feelings must be the object of the malicious intention. We refer to section 298 which deals with the offence with which

it deals.
 "Secondly we think that to penalise even an intentional outrage or attempted outrage upon the religious feeling of any class would be casting the net too wide for the cases with particular reference to which the Bill

belief " of the followers of any religion.

"Further we are impressed by an argument to the effect that an insult to a religion or to the religious belief of the followers of a religion might be inflicted in good faith by a writer with the object of facilitating some measures of social reform by administering such

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Disturbance.—In order to constitute a disturbance within the meaning of this section, it is not necessary that there should be a stopping or an actual prevention of the carrying on of a religious service: nor is it necessary that the religious assembly should be really disturbed.

1 Weir 259; 12 A. 494 (F. B.); An assembly can be disturbed even in a high way. 8 A. L. J. 1150; but see 119 P. L. R. 1909. The essential ingredients of an offence under this section is the doing of an act which causes disturbances 12 A. L. J. 820, 3 Mys. L. J. 77.

The assembly must be lawfully engaged in the performance of religious worship. The place of assembly may be unfit or improper for the purpose, though the object of the assembly may be lawful. A religious assemblage held in a public street or thoroughfare, so as to cause obstruction, would probably not be protected by the provisions of this section from disturbance voluntarily caused by passengers, or by public servants in the exercise of their duties—*Morgan and Macpherson*,

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

Trespassing on burial-
place, &c.

commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Gist of the offence—The provision of this section is applicable where there is a trespass into a place of religious worship with the knowledge that the feelings of persons would be wounded thereby. Rat Un Cr. C. 148

Trespass—The term trespass means any violent or injurious act committed in such place and with knowledge or intention as is defined in that section 40A 529. 17 C. W. N. 534—40 C. 548 An adulterous intercourse is such an injurious act 5 C. P. L. R. Cr. 32, 1924 All. 9=45A. 52. The meaning of the word trespass in this section, is not the same as is attached to it in the expression "criminal trespass" in s 441. The word trespass denotes a wrongful act, and the act of a person who disturbs a place of sepulchre with the intention of wounding the feelings of any person 23 P. R. 1915 Cr. The mere act of trespassing in a place of worship or a burial place, etc., is punished, when the trespass

the intention described in the first part of this section. The intention to wound the feelings or religion, not of a class of persons but of a single individual, suffices to make the act of trespass an offence. The Court

guilty of an offence
with the knowledge
395=A. W. N., 1896,

As regards meaning of "indignity", vide, 1 Weir. 287, 26 P. R. 1897. Cr.

The stopping of a *tazia* during a *Moharram* procession does not amount to an offence under this section A W N 1895, 49

An accused, who commits an offence by having sexual intercourse within the enclosure surrounding a *pagoda*, is punishable under this section for trespassing on a place of worship with the knowledge that the religious feelings of the worshippers are likely to be injured thereby. U. B. R. (1892-1896) Vol. 1, 199. The mere utterance of the words "do not cremate the body" unaccompanied by any attempt to prevent the cremation or by any manifestation on the part of the accused of their intention to interfere if the execution was persisted in, could not be regarded as a "disturbance" within the meaning of this section 44 P L R. 1919 = 20 Cr L J. 145. Where as a result of political differences, the complainant was boycotted, and obstacles put in the way of burying his son but no violence was actually used no offence under the law was committed. 20 A L J. 93 = 23 Cr. L J. 73 = 65 Ind. Cas. 424. Persons who have sexual connection in a mosque commits an offence under this section. 45A. 52 = 21 A. L J. 455 = 73 Ind. Cas 935 = 24 Cr L J. 911. The term trespass in this section does not have the same meaning as is attached to "criminal trespass" in s 441 I. P Code. The term appears to mean any violent or injurious act committed in such place and with such knowledge as is specified in this section. 1 Rang 690, see also 45A. 529 = 21 A. L J 455 = 24 Cr. L. J. 911.

Procedure.—Cognizable—Summons—Bailable—Not-Compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

298. Whoever, with the deliberate intention of wounding

Uttering words, &c., with
deliberate intent to wound
religious feelings.

the religious feelings of any person, utters
any word or makes any sound in the bearing
of that person, or makes any gesture in
the sight of that person, or places any

object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Gist of the offence.—The intention to wound the religious feelings of another must be, in order to convict a person, under this section, a deliberate one. 4 P. R. 1890 Cr. This section treats of offences relating to religion and not to those relating to caste. 6 C. P. L. R. Cr 7, Rat. Un Cr C. 592.

Object of the section.—The Law commissioners thus described the object of this provision —"In framing this clause we had two objects in view. We wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours by words, gestures, or exhibitions. A worn expression dropped in the street by a person, not for a different creed, will not fall under gesture etc., which advisedly and deliberately intended to wound the religious feelings of some person"—

Morgan and Macpherson.

Procedure — Non-cognizable—Summons—Bailable—Compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY

Offence affecting Life

299. Whoever causes death, by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely, by such act, to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause or knowing it to be likely to cause, Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although, by resorting to proper remedies and skilful treatment, the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

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1 "Accidental homicide is, where death is caused by accident or misfortune without any criminal intention or knowledge by one who does a lawful act in a lawful manner and with proper care and caution. See section 80 *ante*

"There may sometimes be great difficulty in giving any legal certainty to such vague terms as "accident", "proper care and caution", and others which occur in this General Exception. But it is nevertheless the duty of the court to ascertain in each case after a careful consideration of the facts, what is their true meaning as applied to those facts.

"Suppose A and Z engage in some game or sport together, in the death If the sport is not or only very slight harm But if the sport is a very deadly, - or if ill-will to the deceased person is proved, or unfair play, or some undue advantage taken in the course even of a harmless pastime, - the court will probably conclude that A, having caused Z's death in a cruel or unusual manner, has committed either the offence of culpable homicide or some other offence See Section 87.

'Again suppose a parent whips his child and death follows the whipping. The court, having ascertained satisfactorily that the punishment was not of a cruel or unusual kind, but was only such moderate chastisement as the law allows to a parent for his child's benefit, would doubtless decide that the death of the child was caused by accident or misfortune, and that the father had committed no offence See Section 89

In these and similar instances it is the duty of the court first to ascertain, and then to apply, the rule of law which is applicable. It must determine the extent of the power of a parent over his child, - the lawlessness of a particular act or game, or of the manner in which it is performed or played, - what degree of caution the law requires in the particular case under consideration, etc If A causes B's death unintentionally by shooting him with a gun which A did not know to be loaded, and the question arises whether A is culpable, - A if he that the gun was not before and put it in t), would probably be

seemed to have acted with proper care and caution The utmost caution that can be used is not requisite, - but only that reasonable caution which is usual and ordinary in like cases.

"2. *Justifiable homicide* is where the taking away of life is justified because it is taken by a judicial act, or in pursuance of a judicial sentence pronounced by some Court or Judge, - or because it is taken in the exercise of a power given, or supposed in good faith to be given, by law.

"The execution of a person who has been duly convicted of murder and sentenced to be punished with death, is an obvious instance of death warranted by the sentence of a Court of Justice and therefore justified

"The execution of a criminal in pursuance of the judgment of a Court even though the Court to pass the judgment, Court had such jurisdiction And not only is the judgment in the exercise of some authority which they believe in good faith to be conferred by law, are equally justified.

"Where life is taken in the exercise of a power given to a person by law, without any judicial act or order, the homicide is equally justifiable. Thus in the exercise of the right of private defence the causing of death is, in many cases, justifiable. See Chapter IV, sections 96—106.

"It is also justifiable, where a person in good faith believes himself bound by law to do an act which causes death. For instance the soldier who fires on a mob by the order of his superior officer, and thus causes the death of an innocent person, is justified. And it may be under peculiar circumstances that an officer of justice in hot pursuit of a criminal, whom he has authority to arrest, would be held justified for an act intended only to stop the flight, but which may have caused, and been likely to cause, the fugitive's death.

"It is also justifiable in certain cases to cause a person's death for the purpose of avoiding or preventing further loss of life. See section 81.

"Of some of these kinds of justifiable homicide, it may be observed that the conduct of both the slayer and the person slain in each case requires the most careful examination. The justification of the taking away of human life by private persons, ought to be confined strictly within those limits which are compatible with the instincts of nature, the security of society, and the due administration of public justice."—*Morgan and Macpherson*.

Murder and culpable homicide—All murders are culpable homicides, but all culpable homicides are not murders. L. B. R. (1897-1901) Vol 1, 282. Culpable homicide is not murder unless the act by which the death is caused is done with the intention stated, in one or more of the four clauses to be interpreted in the light of the four illustrations appended to it one for each clause. *Duray v Emperor*, 75 Ind. Cas. 689.

The difference between culpable homicide and murder is thus pointed out by Sir Barnes Peacock: "There are, in my opinion, several important distinctions between murder and culpable homicide. An offence cannot amount to murder unless it falls within the definition of culpable homicide: for s. 300 merely points out the case in which 'culpable homicide' is murder."

... if the case falls within any of the
... act with the intention of causing
murder, unless the case falls with
in one of the exceptions in section 300.

"Causing death with the intention of causing death ..."

the person who inflicts the injury" 19 Bom. L. R. 823. See also, 19 Bom. L. R. 902

This explanation assumes that the bodily injury was inflicted with the intention of causing death or the knowledge that it would be likely to cause death. It was intended to repeat the English rule that an injury which accelerates the death of a dying man is deemed to be the cause of it, and where death has been caused it is no defense that the deceased was suffering from a complaint which would have caused his death in any event. 44 Ind. Cas. 335

"An offence affecting the life of a person who must soon die, either from a mortal disease or in the course of nature from old age and decay, is not a less offence than one which affects the life of a person in strong health. The offender causes death in the one case by accelerating that event by a few months or days or hours, in the other case possibly he hastened the event by many years. The real difference between the two cases is not in point of law, but in respect of the degree of proof requisite to show the cause of death. For where the death of a person who receives some bodily injury while labouring under a disease is the subject of enquiry, the court in estimating the evidence must consider whether it is sufficiently proved which of the two causes the disease or the bodily injury to the diseased person is the cause of his dying on the day when his death occurs. It is not necessary (if it were possible) that the evidence should enable the court to apportion the two causes and the degree in which each of them contributes to the result. But the Court must be satisfied (1) that the death at the time when it occurs is not caused solely by the disease, and (2) that it is caused by the bodily injury to this extent, that it is accelerated by such injury. Suppose A is ill of Small-pox and gives him piles in such dose that the disease is aggravated and death is accelerated. Z has caused death, notwithstanding that it may be proved that A must have eventually died of the Small-pox."—*Morgan and Morgan.*

lative by the application of proper remedies, and that death might thus have been prevented.

"Proper remedies and skilful treatment" may not be within the reach of the wounded man; or, if they are at hand he may be unable or unwilling to resort to them. But this is immaterial "so far as relates to the due interpretation of the words" "cause of death." The primary cause which sets in motion some other cause,—as the severe wound which induces gangrene or fever—and the ultimate effect, death, are sufficiently

connected as cause and effect notwithstanding that the supervening sickness or disease might have been cured by medical skill. All that it is essential to establish is, that the death has been caused by the bodily injury, and, if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one"—*Morgan and Macpherson*.

Explanation 3—This explanation provides that the causing of the death of a child in the mother's womb is not "homicide." But it may amount to culpable homicide to cause death of a living child if any part of that child has been brought forth, though the child may not have breathed or been completely born. Under the English law complete emergence is necessary to constitute the child a human being. The law in this respect is somewhat wider than the English law. Under this explanation, it must be shown that the child lived and breathed after it had wholly or partially emerged from the mother's womb 29 P. R. 1915 Cr

"The life of the child while it remains wholly within the womb, is a part of the mother's life, and not a separate and distinct existence. But as soon as any part of the child (supposing that it is not a child already without life, a dead foetus) has been brought forth from the womb, the child is accounted a living human being to cause whose death may be culpable homicide. It is further explained that this may be so, though the child may not have breathed. The mere fact of having breathed is a very uncertain indication of life in such cases, for it is well known that many children are wholly brought forth and eventually live, and yet do not breathe for some time after their birth.

"It may be said that a child is not completely born until after the umbilical cord has been severed notwithstanding that the mother has been completely delivered, and that the child is in existence. But it is obvious that to cause the death of such a child, ought to be deemed an offence of the same nature, as the causing of the death of a child one month, one year, or ten years old. The explanation expressly states that complete birth is not requisite. Instead of an uncertain period which it would be difficult to define satisfactorily, and which would, in many cases of infanticide greatly add to the difficulty of proof, a definite and readily ascertained point of time (that is, the time when any part of the child is brought forth) is fixed, to denote when the child may become a subject of culpable homicide.

"If no part of the child has been brought forth, any bodily injury which it receives, however criminal, does not constitute an offence under this section, though it may be an offence under subsequent provisions of the chapter (see sections 315 and 316)—and this, whether such injury prevents the child from being born alive, or causes the death of the child afterwards. If any part of the child has been brought forth, the causing of its death may amount to culpable homicide—not because the child in

this state has necessarily and in all cases a more independent existence than before (for the part first brought forth may be such as to put the child's life in great peril)—but, as we have already seen, because this is a definite period of time.

“As to the person who causes death,—it is enough in this place to say that, in the absence of proof of unsoundness of mind, in capacity to know the nature of the act done, or of some other of those General Exceptions applicable to homicide which declare the thing done not to be an offence, all persons who are liable to punishment under this code may commit the offence of culpable homicide”—*Morgan and Macpherson*.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention

of causing death, or,

2ndly, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or,

3rdly, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or,

4thly, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient, in the ordinary course of nature, to cause death, if Z were in a sound state of health. But under any disease, gives him such a blow as is likely to cause death, he may intend to cause bodily injury without intending to cause death or such injury as, in the ordinary course of nature, would cause death.

(c) A, intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature, Z dies in

consequence Here A is guilty of murder, although he may not have intended to cause Z's death

(d) A, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave, the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

Firstly.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills V, Z's child This is murder inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation

(b) V gives grave and sudden provocation to A A, on this provocation, fires a pistol at V, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight A kills Z Here A has not committed murder, but merely culpable homicide

(c) A is lawfully arrested by Z, a bailiff A is excited to sudden and violent passion by the arrest, and kills Z This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers,

(d) A appears as a witness before Z, a Magistrate Z says that he does not believe a word of A's deposition, and that A has perjured him

self. A is moved to sudden passion by these words, and kills Z. This is murder.

(c) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a by-stander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant, acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offenders having taken undue advantage, or acted in a cruel or unusual manner.

Explanation—It is immaterial in such cases which party offers the provocation, or commits the first assault.

Exception 5—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

Secondly—As to the application of this clause vide illustration (b) and 4 L. B. R. 132=7 Cr. L. J. 410.

3rdly.—In order that culpable homicide may amount to murder under s. 300 (3), the prosecution must prove that the accused intended to cause such bodily injury as is sufficient, in the ordinary course of nature, to cause death. L. B. R. (1893-1900) 452.

Intention—No constructive but actual intention is required to constitute murder 5 W. R. Cr. 42. The intention in this section does not require any forethought. 62 P. R. 1887, Cr

Premeditation.—Mere absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. 3 W. R. Cr. 40, see also 23 P. R. 1890 Cr

Clause (4).—This clause says nothing about intention. 31 P. R. 1914 Cr., see also 73 I. C. 49

Without excuse—Without any exculpatory circumstances, other than those mentioned in the five exceptions vide *Suba v. Empress*, 40 P. R. 1837 Cr, See also 47 P. R. 1887

Exception—It is incumbent on an accused person, who seeks to reduce the nature of his crime, by bringing his case under this exception, to prove that the provocation received by him was such as might deprive him of his self-control, and absence of self-control lasted and P. L. R. 188 Where, therefore, pleaded in a case of murder, the is whether, between the cause of and the dealing of the fatal blow, and for reason to resume its seat. =12 W. R. Cr. 68, 14 C. P. L. R. See also A. W. N. 1886, 297; 24 Ind. Cas. 589. When the evidence in a case leaves room for doubt as to whether the accused has committed murder or the lesser offence of culpable homicide not amounting to murder, the benefit of that doubt should be given to the accused. (1927) M. W. N. 796

For what constitutes grave and sudden provocation.—Vide 28 C. 57=5 C. W. N. 708; 3 W. R. Cr. 55; 5 L. L. J. 40, 74 Ind. Cas. 712; 9 O. & A. L. R. 556; 21 Ind. Cas. 993; 24 Cr. L. J. 663, 1924 Lah. 742, 2 Lah. L. J. 406; 16 Cr. L. J. 625=30 Ind. Cas. 449; 1927 M. W. N. 796.

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Exception (2).—The right of private defence may arise when a person sees a man approaching him with a stick trailing in his hand, for he might expect the man to hit him with the stick. But when such a person claiming the right has another companion by his side who is himself properly armed, he should at least call on the person approaching him with the stick to drop down his stick before resorting to such a dangerous mode of exercising the right as firing a shot at such person. 35 Ind. Cas. 511

Where right of private defence is exceeded—64 Ind. Cas. 133; 8 M. L. T. 462, 12 Cr. L. J. 81—9 Ind. Cas. 452, 13 Cr. L. J. 782—17 Ind. Cas. 414, 1 P. R. 1280 Cr. 6 W. R. Cr. 50, 5 W. R. Cr. 33, 3 A. 253, 7 W. R. Cr. 73

Exception (3).—Shooting under an illegal order of superior officer, is no excuse 21 M. 249. 83 Ind. Cas. 702 (2)

Exception (4).—A prisoner who taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent, and knocked him over should not have been found guilty of murder W. R. 1864, Cr. 36, L. B. R. (1872—1892, 271 13 Cr. L. J. 272, 40 A. 686 Where the accused pleads that the deceased met with his death as the result of a sudden fight in which there was no premeditation and that the fight arose out of a sudden quarrel, but, it is clear that the accused took undue advantage of the deceased in as much as the deceased was lying on his *charpoy* and was not armed and in a position to defend himself, exception 4 does not apply 101 Ind. Cas. 191—28 Cr. L. J. 415

For cases where the exception was not applicable—2 L. B. R. 782—17 Ind. Cas. 414 U. B. R. (1897—1901) Vol I, 288 31 Ind. Cas. 347, 12 P. R. 1896 Cr.

Exception (5).—This exception extends to all cases of death occasioned by, or resulting from, premeditated acts, where the party killed takes the risk of death with his own consent 1 C. L. R. 158, 5 L. B. R. 160 This exception applies to cases where a man commits the doing of some particular act either knowing that it will certainly cause death or that death will likely be the result, but it does not refer to the running of a risk of death from some thing which a man intends to avert, if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated 5 C. 31—4 C. L. R. 285, 45 P. R. Cr. 1917, 6 W. R. Cr. 57

For cases where the exception was not applicable.—Vide 5 L. B. R. 160,

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide, by causing the death of any person, whose death he either intends, nor knows himself to be likely,

Culpable homicide by causing death of a person other than the person whose death was intended.

cause, the culpable homicide committed by the offender is of the description of which it would have been, if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Principle—The definition of culpable homicide makes the offence to consist in death caused by an act done with a certain intention or knowledge. If homicide is the result it is sufficient, for it is no part of the definition that the death caused should be the death of the person whose life is aimed at whether the offender has succeeded or been thwarted as

amounted to murder, supposing him to have been killed by the same means. On the other hand, if the blow intended against A and lighting on B arose

of this adversary in the case of the death of the adversary, see also 1912 M. W. N. 136 = 13 Ind Cas 833, 1912 M. W. N. 193, 36 A 161; 21 Bom. L. R. 1101.

Case—Where a person commits the offence of house breaking into a dwelling house at night and in order to evade arrest strikes out wildly with a dangerous weapon, utterly regardless of whether his blows will or will not cause death or injury to any one of the inmates, and causes the death of a person, the offence is culpable homicide, and the offender is liable to be punished with death, or transportation for life, and shall also be liable to fine.

cause death. 12 P. R. 1911 Ci.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Transportation for life.—This punishment should be awarded in cases of tender age. 11 C. W. N. 904.

Sentence—Court may recommend for reduction of sentence. 145 P. L. R. 1902.

Punishment, principle of awarding.—The framers of the Code have made it discretionary with judges, to consider mitigating circumstances in awarding punishment. 12 Cr L. J. 448 But the lowest sentence under this section is transportation for life. 9 M. L. T. 510

Motive—In a charge of murder, it is wholly immaterial that the motive is inadequate. 100 Ind Cas 226 = 28 Cr. L. J 258.

Cases.—44 C L 253 = 28 Cr. L. J. 253, 32 C W. N. 345, 93 Ind. Cas 42 = 1926 Mad. 638; 23 A. L. J. 821 = 26 Cr L. J. 1431 (F B); 6 Lah. L. J. 323; 6 Lah. L. J. 483; 76 Ind Cas. 180, 107 Ind Cas. 99; 7 N. L. J. 144, 75 Ind. Cas 767, 8 C. W. N. 218, 11 C.W N. 904, 17 C. W. N. 1213, 15 W R. 66 Cr., 23 Cr. L. J 54, 27 Cr. L. J 630, 26 Cr. L. J. 1133; 22 A. L. J 1075, 99 Ind. Cas. 324, 103 Ind. Cas. 971, 96 Ind Cas 849, 91 Ind Cas. 1002.

Procedure—Cognizable—Warrant—Not-bailable not-compoundable—Triable by Court of Session.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

304 Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Scope—"A great latitude of discretion is given to the Judge in apportioning the punishment of culpable homicide when it does not amount to murder, for he is empowered to pass any sentence ranging from... In general, the Code makes penal provisions, between cases of culpable homicide, and cases in which he causes death. But this section awards a more severe punishment to culpable homicides in which the act caus-

death is done intentionally for the purpose of causing death, than it does to those homicides in which the act is done with the knowledge that is likely to cause death, but without intention to cause it."—*Morgan and Macpherson*.

Jury.—As this section deals with two kinds of culpable homicide, the jury ought to be asked to say under which part they find the accused guilty. 19 B. 741.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—This section applies to rash and negligent acts and does not apply to cases when hurt is voluntarily caused. 2 Bom. L. R. 613. The

offences under ss. 336, 337, 338 or 304 A, if done without due care to guard against the dangerous consequences. 4 C 764. Where the act causing death of the accused is in its nature criminal, this section has no application. 12 M. 56. This section does not apply where there is neither culpable rashness nor culpable negligence in the sense in which L. R. Cr 126, L. B. R. (1872-314, L. B. R. (1872-1892), 89; 4, 1 Weir 326, 14 Bom. L. R. 964, 15 A. L. J. 615.

This section is not intended to cover cases where there is no intention to cause hurt. 3 A. L. J. 394; see also 3 A. L. J. 678, 25 Cr. L. J. 449; 36 C. 302; 38 C. 855; 4 C. 815; 30 C. W. N. 66, 14 Bom. L. R. 887. This section has no application where the offence is committed voluntarily. 4 C. 764.

Culpable rashness etc.—Culpable rashness is acting with the cons-

Culpable negligence and mischievous effects, the actor has not exercised due care and that if he had, he would have avoided the consequences. Liability arises from the neglect of the actor. 3, 119. To come under this section

and negligent act of the imate and efficient cause Bom L. R. 679 ; 3 Bom. L. R. 494 ; 32 C. 645. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury or knowledge that it will be probably caused The criminality lies in running the risk of doing such an act with recklessness or indifference as to consequence 30 C W. N 66-53 C 333=1926 Cal. 300=91 Ind. Cas 889=27 Cr L. J 153, see 30 C 302=13 C W. N, 362=9 C. L. J. 404 Where the act is voluntarily caused this section has no application. Bom L R 613, 38 C. 855=15 C. L. J 512.

Criminal Negligence—Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge arises, was the imperative duty of the accused person to have adopted—30 C W N 66

Cases—Vide Rat. Un Cr C. 326 ; 16 A 472, 31 A 290=9 C L. J. 322, 1 Weir 327. A. W. N 1881, 156, 6 A 248.

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate, or Magistrate of first class

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Procedure—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,

Scope.—"This and the preceding section contain express provisions for the punishment of abetting suicide when that offence is actually committed. The ordinary law of abetment is inapplicable here. Suicide or self-murder may be the act of a person who is by law incapable of committing an offence (see sections 82, 83), or it may be committed by a person who is criminally responsible for his actions. In the former case

tion, it must be proved and also that the act and ordinary course of a Weir 328 If a

person who has an evil intent does an act which is the least possible act that he could do towards the accomplishment of a particular crime that he has in his mind, he is not entitled to plead in his aid an obstacle intervening not known to himself 14 A. 31. This section is exhaustive. 14 A 38 "The intention or knowledge which is necessary to constitute murder may exist, combined with an act which falls short of the complete commission of that offence. The murderer may do an act towards the commission of the murder, but may involuntarily fail or be intercepted or prevented from consummating the crime. This and the following section seem to apply (as the illustrations show) to attempts to murder, in which there has been not merely a commencement of an execution of the purpose, but something little short of a complete execution, the consummation being hindered by circumstances independent of the will of the author. The act or omission, although length as at the time of commission sufficient to cause death only with reference to the de

sees There may be many atrocious and deliberate attempts to murder falling within the provisions, which not only cause no hurt, but which are not even trespasses or assaults — *Morgan and Macpherson*

For cases under this section, vide, 15 Bom. L. R. 991, A. W. N. 1903, 43; L B R (1872—1892), 466 2 Bur. L. J 76, 1923 Lah 236 (2), 1923 Lah, 415, 74 Ind Cas 1042, 9 Lah L J 331, 26 P L. R 581, 26 Cr L J. 409, 15 Bom L R. 991

Procedure — Cognizable — Warrant — Not-bailable — Not-Compoundable — Triable by Court of Session

308. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he, Attempt to commit by that act, caused death, he would be culpable homicide. guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z under circumstances that, if he thereby caused death he would be guilty culpable homicide not amounting to murder. A has committed offence defined in this section

Scope.—Similar attempts may be made to commit culpable homicide in any of the mitigated forms which prevent that offence from amounting to murder. Here, as in the preceding section, the attempt must be carried to the point of completion, so far as the criminal is concerned; but the complete effect is frustrated by accident or otherwise—*Morgan and Macpherson*.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, "or with fine, or with both."

Scope.—Any act which is part execution of the criminal design, is sufficient to constitute abetment under this section. But the act must be a beginning of the act of self-murder, or such an approach to it as manifestly shows that there is a present intention to commit the crime.—*Morgan and Macpherson*. A deaf and a dumb person may be guilty under this section. 25 Bom. L. R. 43

Legislative changes.—The words within quotations have been substituted by Act 8 of 1882, s. 7.

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any Thug, or with any other or others for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder, is a thug.

Notes.—Act XXX of 1836, made it an offence punishable with imprisonment for life with hard labour to have belonged to a gang of Thugs, either within or without the limits of British India. This section explains the meaning of the word "thug" as used in the Act of 1836, and is associated for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder, in order to take effect. *Macpherson*.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Proceedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Of the Causing of Miscarriage; of Injuries to unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312. Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation—A woman who causes herself to miscarry is within the meaning of this section.

Cases—For cases under this section vide, 5 C. P. L. R. Cr. 21; Cclm Dig Cr 46 of 1876, 15 W. R. Cr 9, 9 M. 369; 19 W. R. Cr. 32

Miscarriage—Miscarriage is the expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed. The offence defined in this section can only be committed where the woman is in fact pregnant. For although there may be a guilty intention and attempt to commit it on the person of a woman believed to be, but who really is not, pregnant,—the offence, as here defined, seems to require that the woman should be with child—*Morgan and Macpherson*. The Indian Law Commissioners observe, "with respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehensions that this or any other law...est purposes. substantiated bringing a false accusation of this description is, therefore, a formidable engine in the hands of unprincipled men. This part of the law will, unless great care be taken produce few convictions, but much misery and terror to respectable families and a large harvest of profit to the vilest peets of society. We trust that it may be in our power in the Code of Cr Procedure to lay down rules which may prevent such an abuse. Should we not be able to do so we are inclined to think that it would be our duty to advise his Lordship in Council rather to suffer abortion, where the offence is not proved, to remain wholly unpunished, than to repeal provisions which would occasion more suffering to the innocent than the guilty".

If the woman be quick with child.—Quickening, is the name applied to peculiar sensations experienced by a woman about the fourth or fifth month of pregnancy. The symptoms are popularly ascribed to the first perception of the movements of the fœtus. But quickening is not a constant, uniform and well marked distinction of the pregnant state. The phrase "quick with child" is here used probably merely to denote an advanced stage of pregnancy.—*Morgan and Michpherson.*

Explanation.—According to the explanation a woman who causes herself to miscarry is within this section. But in awarding punishment, it will not be forgotten that the high caste young widow, who, to hide her shame, may at the risk of life cause herself to miscarry, does not, under the circumstances in which she is placed by the institutions of society the seducer of a young causes such woman to

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Procedure—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ;

and, if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Notes.—"This species of homicide may be committed involuntarily, that is, in the language of the Code, by a person who does not intend to cause, or think it likely that he will cause, death by the act which he

does not do so.

* "involuntarily does
nent under this sec-
1 in order to prevent
gently. Even if he

takes such precautions and there is no reasonable probability that Z's death will be caused, and if the medicine is rendered deadly by some accident which no human sagacity could foresee, or by some peculiarity in Z's constitution, such as there was no ground whatever to expect, A will be liable to punishment under this section for causing death by an act done with intent to cause miscarriage. The consent of the woman freely and intelligently given, is allowed to mitigate the offence. If A kills Z by administering abortives to her with the knowledge that those abortives are likely to cause her death, he is guilty of culpable homicide, which will be culpable homicide by consent, if Z agreed to run the risk, and murder, if he did not so agree"—*Morgan and Macpherson*

"This is an offence which can, it seems, be committed only where the woman is actually pregnant."—*Ibid.*

Proceduro.—Not-cognizable.—Warrant.—Not-bailable.—Not-compoundable.—Triable by Court of Session.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Notes.—"The causing of the death of a child in the mother's womb and before any part of the child has been brought forth is not homicide. See section 299, Explanation 3

"This section punishes offences directed against the life of an unborn child. Any act done with the intention here mentioned, which results in the destruction of the child's life, whether before or after its birth, is made punishable. Suppose a child's life is destroyed by potions, or bruises which it receives in the womb, it is immaterial whether the child is born alive or afterwards dies by reason of them, or whether they cause born dead. The offence is one which will ordinarily be committed when the woman is in an advanced state of pregnancy. But the section is expressly confined to causing the death of quick child. The offence of causing miscarriage consists in procuring child or fetus, by criminal violence or other means, before the term of gestation is complete.

the present section punishes is the injury to the child's life—the child may be born in proper time, or if born before due time, the miscarriage may happen by natural causes and not by criminal means.

"Acts done in good faith to save the mother's life are excepted. Cases of negligent treatment by doctors and others, where due care and attention have not been used, though not protected by this Exception, are not reached by the words of the section,—which apply only to acts done with the intention of destroying the child's life"—*Morgan and Macpherson*.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session

316. Whoever does any act under such circumstances, that causing death of quick if he thereby caused death, he would be unborn child by act guilty of culpable homicide, and does by amounting to culpable homicide.

of either description for shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die, but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Notes.—"This section punishes offences against children, and not only

death of her quick unborn child, ned, if the blow was intended by was one which he knew or had

"The act done to the woman, if the death of her child is not thereby caused, will probably be punishable as an attempt to commit culpable homicide under the preceding sections.

"Cases of gross ignorance or neglect or rashness in the treatment of a pregnant woman will be punishable under this section, if in their circumstances they would amount to the offence of culpable homicide if the woman's death had been the result."—*Morgan and Macpherson*.

Procedure—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Notes—The offence consists in the desertion by the parent, or other person who has undertaken parental duties, of an infant or child of such tender age that it is not able to provide for and to take care of itself. This offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life. Thus, suppose a mother leaves her illegitimate infant child at a hospital or at some place where it is certain the child will be seen or cared for,—she has committed this offence, if she intended to abandon the child. It is true that she has committed the offence under circumstances greatly mitigating it, as compared with a desertion on a barren heath or in an unfrequented place, where the consequence of desertion is great danger or risk of danger to life.

"The explanation shows that a death which is the result of the exposure, and though the death of homicide and though the death of may amount to an attempt punishable under section 307.—*Morgan and Macpherson*

Being the father or mother—Both are equally bound by ties of duty, and this equally whether the child be born in wedlock or be illegitimate. An infant requiring nurture, or a child of tender years, will ordinarily be in the immediate charge of the mother, the father's duty being that of providing for both mother and offspring. The person who has the immediate care of the child is the person contemplated. A parent who is absent, but who has provided duly for the maintenance and protection of his child, would not be criminally answerable for its abandonment by the person in whose charge he had left it. The offence consists in the desertion of the child by a person who is bound by nature to support and protect it, or who has taken on himself that duty, whether by adopting the child, or by way of contract with the parent, or in some other way.—*Morgan and Macpherson*

Shall expose or leave, etc—Exposure or leaving the child with the intention of wholly abandoning it is an essential part of the

Morgan and Macpherson. Upon the question of intention, the previous treatment, as well as the circumstances of the particular case, will throw light. Thus previous neglect or ill-treatment of the child may add to the intent wholly to abandon it. In a not because those who have the it, but from mere destitution and

Cases.—For cases under this section vide, 24 Ind. Cas. 837; 55 Ind. Cas. 205, 18 Bom. L. R. 934, 21 349, 5 P. R. 1878; 16 W. R. 12; 33 P. R. 1872, 18A. 864; 10 W. R. 52; 1893 A. W. N. 100; 24 M. 662.

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

318. Whoever, by secretly burying, or otherwise disposing of the dead body of a child, whether such child die before or after, or during its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope—The offence under this section cannot be committed unless the child had arrived at the stage of maturity, at the time of birth, and that it might have been a living child 4 M. H. C. App. 33, 2 C. P. L. R. 153, 13 Cr. L. J. 432, 1 Bom. L. R. 155, 1 Weir 333, 1 Weir. 334, Rat. Un. Cr. C. 721.

In order to constitute an offence under this section, there must be a secret burial or other disposal of the dead body. The disposal must clearly be *ejusdem generis* with the secret burial. The disposal need not necessarily be a final disposal. It is sufficient if the body be temporarily concealed with occurs, 13 C. P.

A necessary inq.

L. R. Cr. 5, 1 N.

1 C. P. L. R. 163, Cr. L. J. 432, 1 Bom. L. R. 155, 1 Weir 333, 1 Weir. 334, Rat. Un. Cr. C. 721.

"The concealment of the birth of a child is not in itself an offence, but only a circumstance of suspicion which may form part of the evidence of an offence. This circumstance the law has thought fit to enact by the definition of a substantive offence. Such enactments are justified by the

disposal of the dead body must be proved.

" Whether the father, mother or be had to the doer and the person w mother is passive, giving no direct burial or other disposal,—it seems s act of concealment or disposal of offence is not committed A mere —*Morgan and Macpherson*

Concealment of a dead body to conceal birth, etc.—Not the conceal-
men the delivery of
a ch n There must
be i place is intended
only as a place of temporary deposit, or as a place of permanent deposit.
Merely putting the body in an open exposed position, as on a bed,
would not be such a place But if it be put in a case, or under a bed,
pillow, mattress, etc., this will be a sufficient disposal—*Morgan and Macpherson*.

Of Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

Hurt.
Notes—Many of the offences within this division, will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person for example, who mixes a deleterious potion, and places it on the table of another, (Vide 21 A. L. J. 844) a person, who causes hurt, which another is in the habit of it in a public path, intending that it may cause serious hurt, and may cause hurt. But they cannot, without extreme violence to language, be said to have committed assaults. All bodily hurts, not only those which are serious but also those which are slight, are within the provisions inserted under this division. But a distinction is made between "hurt" and "grievous hurt" It may not be possible to draw a line between the two, with perfect accuracy. But it is better that some such line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good natured man would hardly resent, should be classed together. The several penal provisions which are here made for these offences, are intended to mark by corresponding degrees of punishment the different degrees of bodily injury caused. Still more they mark the mischievous intentions with which such injuries have been perpetrated. For it is the intention or knowledge with which the hurt is inflicted that must chiefly be regarded in a

award of punishment Where a wicked intention is shown to the
 the severity of the hurt inflicted is not a circum-

Macpherson An act which causes death unintentionally is tantamount to
 "hurt" vide, Rat. Un Cr. C 673, 3 C. 623, 18 W. R. Cr. 29; 21 Bom.
 L. R. 1101, 162 P. L. R. 1913; 157 P. L. R. 1913, 2 A. 522, 19 A. 295;
 2 A. 766, 3 A. 507.

320. The following kinds of hurt only
 Grievous hurt, are designated as "grievous :—"

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of
 any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the
 sufferer to be, during the space of twenty days, in severe bodily
 pain, or unable to follow his ordinary pursuits

of hurt, it is for the Magistrate to
 own, as to whether the hurt was
 the Magistrate should examine
 the injuries are of any of the
 kinds specified in this section. It is not the business of the medical
 officer to decide whether a wound is grievous hurt or not, but to describe
 the fact from which the Magistrate will decide 4 Cr L J. 202

"Some hurts which are not, like those kinds of hurts which
 are mentioned in the first seven classes, obviously distinguished
 from slight hurts, may nevertheless be most serious. Thus a
 wound may cause intense pain, prolonged disease, or lasting
 injury to the constitution, although it does not fall within any of
 maim the sufferer or
 m to the point of death.
 l with those which are
 disappear in a few days.
 Three circumstances are
 make a hurt a grievous
 or (2) if severe bodily

pain is caused for twenty days, or (3) if the sufferer is unable to follow his ordinary pursuits for that length of time. The length of time during which he is in pain or diseased, or incapacitated for pursuing his ordinary avocations, though a defective criterion of the severity of the hurt is the best that can be devised. And it is one which may be employed, not merely in cases where violence has been used, but in cases where hurt has been caused without any assault, as by the administration of drugs, the placing of ropes across a road etc.—*Morgan and Macpherson*.

Emasculation.—Vide 19 M. 356, 22 P. R. 1878.

Sixthly.—Vide 1 B. H. C. R. 101.

Seventhly.—Vide 5 W. R. 12; Rat. Un. Cr. L. 558.

Eighthly.—Vide 19 B. 247, 84 Ind. Cas. 888 = 26 Cr. C. J. 294 = 1925 Lah. 297

321. Whoever does any act with the intention of thereby voluntarily causing hurt, knowing that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Scope.—"Both the extent of the hurt and the intention of the offender must be considered. His intention may, in this, as in all other cases, usually be inferred from the act which he has done. It should be observed that the definition now under consideration will include a case in which a person, intending to cause hurt to A, or knowing it to be likely that he will cause such hurt, unintentionally hurts B."—*Morgan and Macpherson*.

Intention.—The intention or knowledge of the accused can only be inferred from the nature and extent of the injury. U B R (1897-1901) Vol 1,316. This offence is caused when the blow is intended for another. 3 C L. R. 304

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration

A, intending or knowing himself to be likely, permanently to disfigure Z's face, gives Z, a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Scope—The provisions of this section are very precise and incapable of misconstruction. A magistrate dealing with a charge under this section must decide and consider not only whether grievous hurt has been caused, but, if it has been caused, whether the accused intended or knew himself to be likely to cause grievous hurt. If he intended or knew himself to be likely to cause simple hurt only, he cannot be convicted under s 325. 28 Ind Cas 1907 "It is requisite not only that the hurt itself should be grievous, but also that the offender should intend or know himself to be likely to cause a grievous hurt. A man who means only to inflict a slight hurt may, without intending or expecting to do so, cause a hurt which is exceedingly serious. A push which to a man in health is a trifle, may, if it happens to be directed against a diseased part of an infirm

result and the intention must to this extent correspond

"The offender's intention may be reasonably proved from this acts. But now, it may be asked, are we to discover what degree of hurt the offender knows himself to be likely to cause? It is not necessary that there should be any hurt of which it could with truth be said, this and this alone is the degree of hurt which the offender knew himself to be likely to cause. A person who ties a rope across a road by night, may

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323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished, with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Notes—A criminal prosecution under this section does not abate by reason of the death of the person injured. 81 Ind Cas. 719

Cases—For cases under this section vide, 1 Weir 346, 5 W.R. Cr. 12; 4 C. L. J. 92, 5 P. R. 1883 Cr., A. W. N. 1884, 256, 19 M. 356; A. W. N. 1888, 236, Rat. Un Cr C. 20, 13 C. L. J. 329=38 C. 293, 11 A. L. J. 959, 5 Bom. L. R. 125, 17 P. R. 1887, 17 C. P. L. R. 36; 5 C. P. L. R. 69 Cr., 5 Bom. L. R. 977, 21 Bom. L. R. 1101, 50 Ind. Cas. 351; 52 Ind. Cas. 797, 97 Ind. Cas. 1053, 40 C. 511; 71 Ind. Cas. 665

Procedure.—Not-cognizable—Summons—Bailable—Compoundable
Triable by any Magistrate

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

And instrument—The expression "an instrument, which used cause death," in this section should nature of the instrument, and not under this section the charge should follow the wording of the section. U. B. R. (1897—1901), V t, 318

Section 334—This section applies to the case of a person who causes hurt on grave and sudden provocation to the person giving the provocation. 1 B. H. C. R. 17

Object—The object of this section is to make a simple hurt more grave and liable to more severe punishment. 7 M. H. C. App. 11.
"The means used to inflict the hurt indicate great malignity. A blow with the fist may give as much pain and cause as lasting injury

cutting with a knife or branding with a hot iron. But in most cases, the offender who has used a knife or a hot iron is a far worse and more dangerous member of society than he who has only used his fist. The hurt actually inflicted may not, according to the classification of hurts, be a grievous hurt. Yet, on account of the mode in which it is inflicted, it deserves to be punished more severely than many grievous hurts. The administering deleterious or stupefying drugs with the view to commit an offence is made punishable by a subsequent section (vide section 328). The mere administering any such deleterious thing, where the object or intention is not apparent, may be an offence within this section.—*Morgan and Macpherson*. Causing hurt on grave and sudden provocation is not an offence under this section. 1 B H C. R. 17. But a charge and finding in case of causing hurt under this section, need not contain a negation that the hurt was caused on grave and sudden provocation 4 M. H. C. R. Ap 5.

Separate sentences—Vide 7 W. R. Cr 60, 12 C. 495; 16 C. 442 (F. B.), 6 C 718, 105 Ind. Cas. 454—23 C. R. L. J. 858.

Procedure—Cognizable—Summons—Bailable—Compoundable when permission is given by Court—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first or second class.

325. Whoever, except in the case provided for by 'section

Punishment for voluntarily causing grievous hurt.

335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be

liable to fine.

Number of accused—Where a number of accused intended to beat the complainant but grievous hurt was inflicted, *Held*, that it must be proved, before any one could be convicted under this section, that the common object was the intention to cause grievous hurt or the knowledge that any one of them might be likely to cause grievous hurt in the course of the beating which they intended to give to the complainant 15 Cr. L. J 192, 5 W. R. Cr. 12, 6 P. R. 1901 Cr, 83 Ind. Cas 589; 1923 Lah. 35.

Scope—To establish an offence under this section, it is necessary that the grievous hurt—s. 320, has been caused—W. R. Cr. 25; 21 P. R. days constitutes grievous

HULL, 1 W. R. Cr. 9.

When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide not amounting to murder, but "voluntarily causing" grievous hurt, 2 W. R. Cr 39.

As regards what is voluntarily causing grievous hurt, Vide, 16 A. L. J. 11, 40 A. 103, 36 C. 659; 9 A. L. J. 180, 4 A. L. J. 207, 18 C. W. N. 1279, 42 A. 302; 29 Cr. L. J. 686-86 Ind. Cas. 62; 6 B. L. R. 549, 3 A. 776.

326. Whoever, except in the case provided for by section 335,

Voluntarily causing grievous hurt by dangerous weapons or means voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Soope—This section can only apply to a person who does a substantive act himself, inflicts a blow which causes grievous hurt as defined in the Code 6 C. W. N. 98

Object—The crime mentioned in the section requires severe repression, and where grievous hurt is caused it usually calls for a heavy sentence. Where some aggravating circumstance exists to which the law attaches a severe punishment, such as the use of a deadly weapon, it is the duty of the court to ascertain the aggravating circumstance and not to assume jurisdiction by ignoring it, and then by passing a sentence for a minor offence, defeat the plain intention of the law. I. B. R. (1872-1892), 182. See also, 20 P. R. 1915 Cr

Evidence of civil surgeon—It must be laid down as a general rule that, in all grievous hurt cases, the evidence of the Civil Surgeon who examined and attended on the person to whom the hurt has been caused, if obtainable without unreasonable delay or expense, should be taken. L. B. R. (1872-1892), 292

Cases—182 P. L. R. 1914 4 L. B. R. 271, A. W. N. 1900 47; 17 C. W. N. 1248, 20 Ind. Cas. 220, 5 L. B. R. 34 (F. B.), 16 C. W. N. 909; 1 L. B. R. 221, 47 M. 746, 1923 Lah. 447, 74 Ind. Cas. 717; 42 M. 547 47 M. L. J. 221 (F. B.), 74 Ind. Cas. 717-24 Cr. L. J. 813

Procedure—Cognizable—Summons—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope—The bodily hurt is inflicted by way of torture. The execrable cruelties which are committed in India by ruffians, dacoits, etc., for the purpose of extorting property, or information relating to property, render a severe punishment necessary. The section applies not only to such purpose of extorting, or of property, notwithstanding to such property. stinging rattles, the under this section. 18

W. R. Cr 8.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Separate conviction—It is doubtful whether separate convictions under ss. 147 and this section are legal. 8 C. L. R. 390.

328 Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope—In order to convict a person of an offence under this section mere administration of the drug will not do. There must also be evidence to show that such administration was with the intent specified in the section and to cause injury to the

is likely to cause hurt. A person who knowingly causes another to take

poison, may be presumed, without further proof, to intend to cause hurt, unless he is able to show satisfactorily a good intention, e. g. that it was administered in good faith medicinally. Stupefying, intoxicating, or unwholesome drugs or liquors may often be given and taken by those who know their qualities, or who have no intention to cause hurt or to commit an offence by means of them. Where such things are administered, the criminal intention, which is an essential portion of the offence here defined, should be made to appear to the satisfaction of the Court. The sale of intoxicating or unwholesome liquor or drugs by persons who know their qualities, and that they are likely to cause hurt, is not, it seems, an offence falling under this section"—*Morgan and Macpherson*

Hurt—In order to constitute an offence under this section it is not necessary that the hurt should be caused to any particular person intended or that the person injured or likely to be injured should have been previously known. 5 B H. C Cr. 50, 5 L. B. R. 79.

Cases—8 Bom. L. R. 513, Rat. Un. Cr. C. 509, 9 C P. L. R. 14.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session

329 Whoever voluntarily causes grievous hurt for the purpose

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act, of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do any thing that is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes.—Vide notes under s 327. Grievous hurt under the like aggravated circumstances is here made punishable

Procedure—Cognizable—Warrant—Not-compoundable—Not-bailable—Triable by Court of Session.

330 Whoever voluntarily causes hurt, for the purpose of

Voluntarily causing hurt to extort confession, or to compel restoration of property, or for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

Elements.—There must be connection between the assault and restoration of property 5 Pat. L. W. 109. It must be proved that the assault was inflicted for the purpose of extorting confession or restoration of property. 46 Ind. Cas. 525=5 Pat. L. W. 109=19 Cr. L. J. 749; 13 W. R. 23 Cr. The word "demand" refers to some demand in respect of some property. 11 M. 257

Cases—9 C. P. L. R. Cr. 18; U. B. R. (1897-1901) Vol. 1, 320, 1 Weir 52; 13 A. L. J. 439, 8 B. L. R. 557, 86 P. R. 1866, 7 C. P. L. R. 17, 20 W. R. Cr. 41, 37 A. 358, 19 C. W. N. 330; 20 B. 394; 7 W. R. Cr. 3, 30 A. 568, 20 B. 394

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer any confession, or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of any

he liable to fine.

Scope.—The hurt or grievous hurt in these sections is supposed to be committed by way of torture, but for purposes differing from those

mentioned in the two preceding sections. The illustrations show the operation of these provisions. The information sought for may be required for the advancement of justice—nay more, it may be such information as cannot be withheld without offending against public justice—the property, the extortion of which is sought, may be property which the sufferer has borrowed from the offender, and which he illegally refuses to give back—the claim or demand may be a just claim, but the law will not tolerate the

punishable, even when used
Here the word "demand"

the extortion of a promise to restore an abducted woman is not an offence under this section. 5 Lah. L. J. 374-73 Ind. Cas. 272=24 Cr. L. J. 576-1924 Lah. 167. Torture by police officer for getting confession which causes death is an offence under this section. 40 Ind. Cas. 710.

Case—14 Bom. L. R. 41.

Procedure.—Cognizable—Summons—Not-bailable—Not-compoundable—Triable by Court of Session

332 Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cases—7 M. L. T. 386=6 Ind. Cas. 12, 76 P. L. R. 1903, 18 P. R. 1910; 8 S. L. R. 1, L. B. R. (1893-1900), 192, 6 Cr. L. J. 22, 161 P. L. R. 1911, 19 C. 105, 16 P. R. 1913 Cr., 18 A. 246, 223 P. L. R. 1912; 6 Cr. L. J. 446, 16 C. W. N. 336, 111 P. L. R. 1912, 19 C. 105, 114 P. L. R. 1903, 4 C. L. J. 92, 13 A. L. J. 439, 26 Ind. Cas. 319; L. B. R. (1893-1900), 192, A. W. N. 1907, 186=6 Cr. L. J. 22, 42 A. 67, 22 A. L. J. 501, 13 A. L. J. 979, 40 A. 28, 15 A. L. J. 813, 40 M. 1028, 105 Ind. Cas. 817; 83 Ind. Cas. 899; 85 Ind. Cas. 245

Procedure—Cognizable—Warrant—Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done

or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes—The offence contemplated by section 332 and section 333 consists in causing hurt or grievous hurt to a public servant in the lawful discharge of his duty, or in order to deter him from it, or in consequence of it, vide 18 S. L. R. 221—88 Ind. Cas. 15—26 Cr. L. J. 107, 105 Ind. Cas. 817; 83 Ind. Cas. 899; 26 Cr. L. J. 195; 13 A. L. J. 439; 15 A. L. J. 565; 37 A. 353; 18 A. 246, 22 A. L. J. 501; 85 Ind. Cas. 245, 26 Cr. L. J. 551; 83 Ind. Cas. 899. Such public servants as officers of justice, while in the execution of their offices, are under the peculiar protection of the law. Without this special protection, the public tranquility cannot be maintained or private property secured, nor in the ordinary course of things can offenders be confined to the moment and at the scene of action. He is under the same protection of the law while proceeding to the place, while remaining there, and while returning from it. *Morgan and Macpherson*. The protection which the law affords to these public servants is not, it seems, confined to them, but extends to persons acting in good faith by this directions *Ibid*, 19 M. 349, 21 M. 296 but see 38 A. 14—13 A. L. J. 979—31 Ind. Cas. 995—16 Cr. L. J. 819; 4 C. L. J. 92. But when public servants step beyond the limits of law, they wholly forfeit the protection and privilege which it confers on them—*Morgan and Macpherson*, 44 C. L. J. 92.

Procedure—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session.

334. Whoever voluntarily causes hurt on grave and sudden

Voluntarily causing hurt on provocation. provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Scope—The punishment is mitigated because the hurt is caused on grave and sudden provocation. Causing grievous hurt on grave and sudden provocation is punishable more severely than causing hurt not grievous on such provocation.

on the same principles on which culpable homicide has been framed. section applies to the case of a person who causes hurt on grave and sudden provocation to the person giving the provocation. 1 B. H. C. R. 17 see also 27 Ind. Cas. 559—16 Cr. L. J. 175, 94 Ind. Cas. 142—27 Cr. L. J. 574; 14 Cr. L. J. 442, L. B. R. (1892—1900) 484.

Procedure.—Not-Cognizable.—Summons.—Bailable.—Compoundable.—Triable by any Magistrate.

335. Whoever "voluntarily" causes grievous hurt on grave, and Voluntarily causing sudden provocation, if he neither intends grievous hurt on provo- nor knows himself to be likely to cause ciation, grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both

Explanation—The last two sections are subject to the same provisos as exception 1, section 300

Legislative changes—The word within quotations has been added by Act 8 of 1882

Compoundable—Only grievous hurt coming under this section and section 338 is compoundable S C 74, oudh.

Cases—17 Bom. L. R. 68, A W. N 1889, 9, 4 W. R. Cr. 21, 3 W R Cr. 55

Procedure—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class

336 Whoever does any act so rashly or negligently as to endanger human life or the personal Act endangering life or personal safety of others. safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both

Scope—Hitherto cases in which hurt has been voluntarily caused have been provided for But hurt may be caused involuntarily yet culpably There may have been no design to cause hurt, no expectation that hurt would be caused Yet there may have been a want of due care not to cause hurt For these cases of the involuntary, yet culpable, infliction of bodily hurt, and also for the like cases of causing, risk of hurt, this and the following sections are provided. *Morgan and Macpherson*. Many specific acts of rashness or negligence likely to endanger life or to cause hurt or injury, are made punishable by chapter XIV This section punishes similar acts, of whatever kind, which cause risk to human life or to the personal safety of others, although no hurt may have been caused thereby *Morgan and Macpherson* For the conviction of an offence under this section, the fact that human life or the personal safety of others was endangered

must be proved. It is not merely a question of the words "rashly or negligently." 1 L. B. R. 45, 5 C. W. N. 376.

Rashly.—A rash act is primarily an over hasty act and is thus opposed to a deliberate act but it also includes an act which though it may be said to be deliberate, is yet done without due deliberation and caution. L. B. R. (1893-1900), 426. An act which is in itself unlawful is neither rash nor negligent U. B. R. 1905, Penal Code 15=2 Cr. L. J. 475.

This section applies to acts which are in themselves lawful but which are done so rashly or negligently as to endanger human life etc. L. B. R. (1872-1892), 595.

Cases.—18 C. W. N. 1176; 2 Weir 48, U. B. R. (1892-96) Vol 1, 219; 5 L. B. R. 100, 1 Weir. 337, L. B. R. (1872-1892), 595; 42 B. 396, 87 Ind. Cas. 523=47 A. 606=26 Cr. L. J. 987.

Procedure.—Cognizable—Summons—Bailable—Not-compoundable—Triable by any Magistrate

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both

Scops.—This section applies only to acts done without any criminal intent. Personal injury intentionally caused is neither a rash nor a negligent act U. B. R. (1904) 1st Cr. Penal Code, 6 Where an operation was needlessly made by a physician in a primitive way without taking the most ordinary precautions and where the instruments used were not disinfected and sterilized and where the result was that the operation was unsuccessful and the complainant's eye sight was permanently damaged to a certain extent, held that the accused physician was rightly convicted under this section, 39 B. 523=17 Bom L. R. 384.

Causing hurt by negligence in the use of gun would fall under this section, 28 A. 464=3 A L. J. 332. Where a wife administered to her husband a *dhatura* potion to make him less quarrelsome, which potion she received from her lover without enquiring what that potion is, she is guilty under this section 19 Bom. L. R. 54=38 Ind. Cas. 1003=18 Cr. L. J. 443; see also 39 C. 855.

Procedure—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable by Presidency Magistrate or Magistrate of the first or second class.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Notes—Causing death of a child wife by having sexual intercourse with her is an offence under this section 18 C 49 For other cases under this section vide, 16 Ind Cas 511=18 Cr. L.J. 703, 6 M H C. R. App. 31; 100 Ind. Cas. 831=28 Cr. L. J. 351=1927 Lah. 165=28 P. L. R. 99.

Procedure—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable by Court of Presidency Magistrate or Magistrate of the first or second class.

Of wrongful restraint, and wrongful confinement

Scope—The provisions under this head are for the punishment of offences, in which the offender, although he may have no design against human life, and no intention to inflict bodily hurt, either wholly deprives the injured person of his freedom, or in some degree abridges his personal liberty. The personal restraint or confinement may, in some cases, be so slight as to deserve little more than a nominal punishment, but the arbitrary imprisonment of a person, which is often a quiet and convenient mode of prosecuting him, is a most serious offence, deserving of exemplary punishment—*Morgan and Macpherson*.

339. Whoever voluntarily obstructs any person, so as to prevent that person, from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person

Exception—The obstruction of a private way over land or water, which a person, in good faith, believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section

Illustration

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path Z is thereby prevented from passing A wrongfully restrains Z.

Scope—This section relates to the voluntary obstruction by a person, and not obviously, at least to obstructions, which are not voluntarily continued by the persons accused of the obstruction, throughout the time this obstruction lasts. 9 Bom L. R. 30. 364 M. 547 Under this

the obstruction should be so complete and successful as to prevent the person obstructed from proceeding in any direction in which he has a right to proceed. 15 Bom. L. R. 103. Obstruction must be of the obstructive restraint.

obstruction of the complainant. 9 M. L. T. 103. There must be obstruction attributable directly to the person charged. 5 M. L. T. 207. An obstruction made by a person who acts in good faith in the supposed exercise of any right is not an offence. And it is not apparent why the exception appended to the definition, is confined to the case of obstructing a private way. The obstruction must be voluntary, that is, the act or the illegal omission which causes it must be intended or known to be likely to obstruct. If there is this intention or knowledge, it is not necessary that there should be actual obstruction by physical means, by some act done, etc. — *Morgan and Macpherson*. This obstruction must be against a person. 15 Bom. L. R. 103, but see 10 W. R. 35. The obstruction must be a physical obstruction. 1 Weir 339. Restraining a horse in order to obstruct a rider is an offence. 28 Cr. L. J. 320.

Cases — 10 W. R. Cr. 20, 10 W. R. Cr. 35, Rat. Un. Cr. C. 89; 7 M. L. T. 366, 1 Weir 340, 27 Bom. L. R. 106, 27 Bom. L. R. 1419.

that they had a right to ground, and erected a that their case was covered also 30 C. W. N. 921, 24 C. 603, 47 C. 610, 15 Cal. L. J. 334, 12 B. 371, 5 P. W. R. 1914, 34 M. 547; 16 Cr. L. J. 701.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

Illustrations

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

What constitutes.—The use of physical force is not a necessary ingredient of the offence of wrongful confinement. The mere detention of a person at a police station by moral force, exercised by the police or other persons guarding him, would be sufficient to constitute the offence. 1 Weir 341; 4 Bom. L. R. 79. A person may be guilty of

wrongful confinement though he acts without malice 13 B 376. Confinement of a prisoner already undergoing imprisonment in a cell within the jail for the purpose of administering *enema*, against his will, and without legal authority, amounts to wrongful confinement 30 C. 95=6 C. W. N 511

338, 1 Weir 341

to proceed has

was consented to by the person arrested, 30 r. & 1894 Cr As

in vide 27C 925=4

int from entering

also 42 B 141

of fact is not an

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both

Essentials of an offence.—To justify a conviction, for an offence under this section, it must be found that the person complaining has a right to proceed along the path and that he was obstructed from doing so, 2 L W 1035. The slightest unlawful obstruction to the liberty of the subject to go where and how he likes to go, is an offence, 11 C. W. N 1035. The slightest unlawful obstruction to the liberty of the subject to go where and how he likes to go, is an offence, 11 C. W. N 1035.

lawful manner

this section

constitute wr

of wrongful restraint, which consists in the keeping a man out of a place where he wishes to be and has a right to be, when it does not amount to wrongful confinement and when it is not accompanied with violence or with the causing of bodily hurt, is seldom a serious offence. It is therefore visited with light punishment"—*Morgan and Macpherson*

Cases—1 Weir 310, Rat. Un. Cr. C 451, 24 C. 885=1 C. W. N. 665, 12 C 55, 5 C. W. N 215, 24 W R Cr 51, 22 P. R. 1910, 2 M. L. T 159, 21 M. L. J. 439, 5 P. W. R 1914 Cr =34 P. L. R. 1914, 4 C. W. N 47, Rat. Un. Cr. C 933, 20 Bom. L. R. 106, 44 M 413, 86 Ind Cas 426, 1925 Lah 614; 102 Ind Cas 481.

Procedure.—Cognizable—Summons—Bailable—Compoundable—Triable by any Magistrate

342 Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for wrongful confinement,

to one thousand rupees, or with both.

Scope.—"This section punishes the offence defined by section 340. Wrongful confinement, which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go. It may, like wrongful restraint, be a slight offence. But when attended by aggravating circumstances it may be one of the most serious that can be committed"—*Morgan and Macpherson*.

Cases.—30 M 179, Rat Un Cr 331, 4 Ind Cas 312, 29 P. R. 1904 Cr., U B. R. (1892-1896) Vol 1, 221, 6 N W. P 293; Rat, Un. Cr. C 220, 12 B 377, 18 L. W. 167, 5 L. L. J 38, 121 P. L. R. 1916.

Procedure—Cognizable—Summons—Bailable—Compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

343 Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Notes.—One aggravating circumstance in this offence of wrongful confinement is the duration of the confinement. Confinement for a quarter of an hour may possibly be a mere frolic, deserving only a nominal punishment. It may indeed be so harmless as not to amount to an offence. But the like confinement if continued for a length of time may come to be a very serious offence—*Morgan and Macpherson*. The confinement must be against the person's wishes. Vide 1923 Lah 274—5 L L J. 38.

Procedure.—Cognizable—Summons—Bailable—Compoundable with permission of Court—Presidency Magistrate or Magistrate of the first or second class,

344. Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Notes—Chaining an insane brother for a period of nearly three months is an offence under this section. 47 A 475—21 A L J. 391.

Sentence.—The sentence should include imprisonment. 1 B.H. C 39.

Procedure—Cognizable—Summons—Bailable—Not Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

Notes.—This is another circumstance of aggravation. The offender persists in wrongfully confining a person notwithstanding an order issued by a competent authority for the liberation, or for the production of such person.—*Morgan and Macpherson.*

Procedure.—Not Cognizable—Summons—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person confined, or to any public servant, or that the place of such confinement may not be known to or discovered by, any such person or public servant as herein before mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Scope.—To render a person liable, under this section, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered. Q C 221. No separate sentence is to be passed in cases of restraint in attempt to kidnap. 6 N W P 293. The offence consists in wrongful confinement, aggravated by the offender's endeavour to deprive his prisoner and those interested in him or bound to protect him, of the remedies which the law gives against this wrong. This intention of the offender is not expressly made part of the definition.—*Morgan and Macpherson*

Procedure—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, from any person interested in the confined, any property or valuable or of constraining the person confined, or any person

Scope—"This section punishes the offence defined by section 340. Wrongful confinement, which is a form of wrongful restraint, is the keeping a man in such a state of absolute restraint as to deprive him of his right of movement."

that can be committed. —*Morgan and Macpherson*.

Cases—30 M. 179; Rat. Un. Cr. 331, 4 Ind. Cas. 312, 29 P. R. 1904 Cr.; U. B. R. (1892-1896) Vol. 1, 221, 6 N. W. P. 293, Rat. Un. Cr. C. 220, 12 B. 377; 18 L. W. 167; 5 L. L. J. 38, 121 P. L. R. 1916

Procedure—Cognizable—Summons—Bailable—Compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

343. Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Notes.—One aggravating circumstance in this offence of wrongful confinement is the duration of the confinement. Confinement for a quarter of an hour may possibly be a mere frolic, deserving only a nominal punishment. It may indeed be so harmless as not to amount for a length of time
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Procedure.—Cognizable—Summons—Bailable—Compoundable with permission of Court—Presidency Magistrate or Magistrate of the first or second class,

344. Whoever wrongfully confines any person for ten days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Notes—Chaining an insane brother for a period of nearly three months is an offence under this section. 47 A 475—21 A L. J. 391.

Sentence.—The sentence should include imprisonment. 1 B. H. C. 39.

Procedure—Cognizable—Summons—Bailable—Not Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

Notes—This is another circumstance of aggravation. The offender persists in wrongfully confining a person notwithstanding an order issued by a competent authority for the liberation, or for the production of such person.—*Morgan and Macpherson*.

Procedure.—Not Cognizable—Summons—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person confined, or to any public servant, or that the place of such confinement may not be known to or discovered by, any such person or public servant as herein before mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Scope.—To render a person liable, under this section, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered 9 C 221. No separate sentence is to be passed in cases of restraint in attempt to kidnap 6 N W P. 293. The offence consists in wrongful confinement, aggravated by the offender's endeavour to deprive his prisoner and those interested in him or bound to protect him, of the remedies which the law gives against this wrong. This intention of the offender is not expressly made part of the definition.—*Morgan and Macpherson*.

Procedure.—Cognizable—Summons—Bailable—Compoundable with permission of the Court—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

347 Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined, or any person interested in

such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Cases—12 W. R. Cr. 27 ; 31 C. 170.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or of any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined, to restore or to cause the restoration of, any property or valuable possession or to satisfy any claim or demand, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Cases.—1 Weir 40 ; 1 Weir. 52. U. B. R. (1892-1896), Vol. 1, 221 ; 1 W. R. Cr. 26, 5 M. 33.

Procedure—Cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the first class

Of Criminal Force and Assault,

Of Criminal Force and Assault.

traint A man who impertinently puts his arm round a lady's waist, who aims a severe stroke at a person with a horse whip, who maliciously throws a stone at a person, squirts dirty water over him, or sets a dog at him, may cause no hurt and no restraint,—yet it is evident that such acts ought to be prevented—*Morgan and Macpherson*.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes any substance such motion, or change of motion, or cessation of

motion, or change of motion, or cessation of motion, in one of the three ways hereinafter described :—

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described :—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion or to cease to move

Raising a lathi—Where the accused raised a lathi to strike the complainant, and the latter ran away to save himself the offence under this section is completed. 12 A. L. J. 154=23 Ind. Cas. 183=15 Cr. L. J. 231, 74 Ind. Cas. 1049=24 Cr. L. J. 857=1923 A. 333.

Force.—Where violence has been caused to an inanimate object only and not to any person, there was no criminal "force" as defined in this section. 18 C. W. N. 1150=15 Cr. L. J. 770=26 Ind. Cas. 168. As regards other cases of criminal force, vide 28 Cr. L. J. 191, 4 P. R. 1880, 72 Ind. Cas. 616=24 Cr. L. J. 456.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force, to cause, or knowing it to be likely that, by the use of such force, he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(a) Z is sitting in a moored boat on a river. A unfastens the moorings and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other acts on any person's part. A has therefore intentionally used force to Z, and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes

them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z, and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(c.) Z is riding in a palanquin, A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused a cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d.) A intentionally pushes against Z in the street. Here A has by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(e.) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water, if the throw-
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or annoy Z, he

(f.) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g.) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z, and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h.) A incites a dog to spring upon Z without Z's consent. Here if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

Intentionally.—The word 'intentionally' shows that all involuntary, accidental, or merely negligent acts are excluded (Vide Mayne s 415).

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offered that the act was done to him against his will or without his consent. *Reg v Fletcher*, L. R. 1 C. C 89 cited in Mayne's Criminal Law s. 415

Criminal force—The offence of being members of an unlawful assembly is one in the composition of which the use of criminal force does not enter, though the show of criminal force may exist 25 C. 434 = 2 C. W. N 305.

Scope—This definition of criminal force appears to include what is termed by the English law "battery," that is, any, even the least hurt or violence inflicted on the person of another. If there is the use of force as defined in the preceding section, and this is intentional on his part who uses it, and is also without the consent of the person against whom it is used, such use of force becomes criminal, when it has for its object the commission of an offence (the section 40), or the causing of injury (see section 44), or the causing of fear or annoyance. It will be observed that the definition of the offence does not include anything that the doer does by means of another person.—*Morgan and Macpherson*.

351. Whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstance, might not amount to an assault, the gesture explained by the words may amount to an assault.

Scope.—An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. It seems to consist in an attempt or offer by a person having present ability with force to do any hurt or violence to the person of another. And it is

committed whenever a well-founded apprehension of immediate peril from a force already partially or fully put in motion is created. An assault is included in every use of criminal force. Mere words, it is explained, do not amount to an assault. Such acts as the following,—a blow which is purely accidental, an injury received in playing at any lawful sport by consent, reasonable chastisement of a child by his parent or guardian, or of a scholar by his school master, a blow or other violence in self defence, the use of force by a public servant within the sphere of his duty, force used in defence of a man's property and the like, vide 24 Cr. L. J. 276—71 Ind Cas 996—are not offences, either under the head of criminal force or assault, or under any other provision of the code. By the Chapter of General Exception such acts are saved from being accounted offences.—*Morgan and Macpherson*.

Any gesture calculated to excite in the partly threatened a reasonable apprehension that the party threatening intends immediately to offer violence or is about to use criminal force to the person threatened, constitute, if coupled with a present ability to carry such intention into execution, an assault in law. 1 B H C R 205 To substantiate a charge of assault upon a particular person, it is necessary that a gesture or preparation should be made by a person which would cause another person to apprehend that the person was about to use criminal force to him then and there. It would not be enough to prove that the words used and the preparations made were calculated to cause that person to apprehend that criminal force would be used to him, if he persisted in a certain course of conduct. 30 C 97-6 C W. N 312

Gesture or preparation - Mere words do not amount to assault. But the words which the party threatening uses at the time may either prevent them from doing so. 1 B H 7
It is not sufficient 8 M L T. 118 = 7

Cases—Throwing a bottle into a house with the intention of frightening the inmates, constitutes an offence under this section. 4 Cr. L. J. 201—3 L. B. R. 194. Causing the death of a man, who had an enlarged spleen, by striking him is an offence under this section 21 P. R. 1876 Cr.

352. Whoever assaults or uses criminal force to any person

Punishment for assault or criminal force otherwise than on grave provocation otherwise than on grave provocation shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation

sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact

Criminal force—To constitute 'criminal force', the offender must intentionally use force to any person without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used. Unless all these elements are present, a person cannot be convicted under this section U B R 1892-1895, Vol. 1, 226, U B. R. (1892-1896) Vol. I, 228.

Scope—This section provides the ordinary punishment for an assault or for causing criminal force. A mitigation of punishment, when there is grave and sudden provocation, is admitted here as in cases of culpable homicide and of hurt. The several general exceptions concerning the right of private defence, acts done by consent, etc., should be borne in mind.—*Morgan and Macpherson*.

Procedure—Not-Cognizable.—Summons.—Bailable.—Compoundable.—Triable by any Magistrate

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope—"The assault is aggravated because a public servant is the object of it. To support a charge under this section,—besides proof of the assault or use of criminal force, and that it was used against one who either was or was acting as a public servant—it should be shown that the accused had knowledge of the official character of the person assaulted. It will of course be open to the accused to show illegality or excess on the part of the public servant.—*Morgan and Macpherson*.

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assault on him to deter him from doing that duty, will make the accused liable under this section. 24 P. R. 1880 Cr. 8 Ind. Cas. 881=9 M. L. T. 168=11 Cr. L. J. 727. An assault made on a public servant acting in obedience to the orders of his superiors is punishable under the section, the question whether those orders were right or wrong being immaterial in the case. 14 Cr. L. J. 141=18 Ind. Cas. 891. But where the public servant exceeds his power and where he is not empowered the offence under this section will not be committed. 1 Weir. 343; 13 A. L. J. 691=16 Cr. L. J. 589=30 Ind. Cas. 141, 31 C. 424=1 Cr. L. J. 442; 59 Ind. Cas. 321, 25 Cr. L. 742, 75 Ind. Cas. 731, 76 Ind. Cas. 655; 75 Ind. Cas. 768, 47 M. L. J. 447; 1 Weir. 344; 19 N. L. R. 183.

But slight irregularities will not help the accused. 46 M. L. J. 45. A. W. N. 1885, 24; 76 Ind. Cas. 186; 27 A. 491, 5 C. W. N. 843; 13 N. L. R. 87, 30 Ind. Cas. 141.

Cases.—35 C. 361; 4 C. W. N. 245, 3 C. W. N. 605; 3 C. W. N. 627, 20 P. R. 1880 Cr. 31 C. 424; 103 P. L. R. 1904; A. W. N. 1906, 98; 6 C. W. N. 342; 13 W. R. 49, 9 B. 558, 12 C. 495; 8 A. 293; 1 Weir. 342, 28 C. 399; 28 B. 746, 21 M. 296; 26 C. 630, 28 C. 411; 13 W. R. Cr. 49; 45 M. L. J. 74; 4 Pat. L. T. 171, 4 Lsh. 448; 17 A. L. J. 115, 48 Ind. Cas. 688, 83 Ind. Cas. 1007.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

354. Whoever assaults or uses criminal force to any woman,

Assault or criminal force to woman with intent to outrage her modesty. intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—In order to constitute an offence under this section mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outrage alone for its object. 1 Weir. 347; 31 C. W. N. 583=103 Ind. Cas. 553. But an indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court be satisfied that the conduct of the accused indicated a determination to gratify his passions at all events and in spite of all resistance. 5 B. 403. In order to constitute the offence there must be intention or knowledge that the woman's modesty

will be outraged. 14 Cr. L. J. 149; 42 P. W. R. 1910; 16 P. W. R. 1912; 15 Ind. Cas. 309 'Woman' is explained to denote a female human being. 14 Bom. L. R. 961 = case "to outrage modesty" e modesty of one woman by another. The taking by this section, but the

provision is not confined to such cases. In a country, where many women consider themselves as dishonoured by exposure to the gaze of strangers many gross insults of a different kind, such as a man rudely thrusting his head in to the covered palanquin of a woman of rank, may well be deemed to outrage female modesty. . . . Assaults committed with intention to commit rape are not, it seems, here contemplated."—*Morgan and Macpherson*.

Cases.—Where the accused took of the clothes of a woman, threw her on the ground and then sat down beside her but said nothing, he committed an offence under this section. 116 P. L. R. 1912. But where evidence proves that the accused stripped a girl nearly naked and was lying upon her, when her cries attracted people to the spot, he committed an offence under sections 376, 511, and not merely under this section. 8 Ind. Cas. 237 = 42 P. W. R. 1910 Cr. In such cases magistrates should not try the case under s. 354, in order to give themselves jurisdiction. U. B. R. (1892-1896) Vol. I, 234; U. B. R. 1897-1901 Vol. I, 84.

Proof.—A charge under this section is one which is very easy to make and very difficult to rebut, and also one which experience shows women are sometimes apt to make from one motive or another without the slightest foundation. So, when such charges are made, it is necessary to see whether they are supported by independent evidence besides that of the woman herself, or, are corroborated by her conduct and the surrounding circumstances and are consistent with ordinary probabilities. U. B. R. (1892-1896), Vol. I, 229; U. B. R. (1897-1901), Vol. I, 325.

Proceduro.—It is obviously unjust to convict an accused under this section, without calling upon him for his defence in respect of the particulars which differentiate the offence from that stated in the charge against him under s. 352. 1 L. B. R. 287. See also, 15 Cr. L. J. 366 = 23 Ind. Cas. 734.

Proceduro.—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

description for a term which may extend to two years, or with fine, or with both

Provocation.—The complainant who was not a pleader, intruded into the pleader's room at Belgaum, in order to see a pleader. The accused, a pleader, objected to the complainant's presence in the room and had read out to him one of the rules which required an out-sider to withdraw from the room if his presence was objected to. The complainant refused to leave the room and sat resolutely down. The accused went to him and put him out of the room. *Held* that no offence was committed under this section since the complainant's intention in remaining in the room, after his presence was objected to, was to annoy the accused, and the accused did not exceed his rights in putting the trespasser out of the room. *Empoor v More Balvant*, 15 Bom L R 1039. In order to convict a person under this section absence of grave and sudden provocation should be proved. 96 Ind Cas 359 = 27 Cr L J 1003—1927 Nag. 47.

Intention.—The intention to dishonour may be supposed to exist when the assault or criminal force is by means grossly insulting, such as kicking a man, pulling a man's nose, or laying a whip across the shoulders.—*Morgan and Macpherson*.

Procedure.—Not-cognizable—Summons—Bailable—Compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

356. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Application.—This section applies to a case where criminal force is used in an attempt to commit theft and not where theft has been committed. The latter offence amounts to robbery. *Reg. v. Mukum*, Rat Un. Cr. C. 3

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Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by any Magistrate.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force
to attempt wrongfully to
confine a person

Procedure—Cognizable—Warrant—Bailable—Compoundable with permission of the Court—Triable by any Magistrate.

358 Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Assaults or criminal force
on grave provocation

Explanation.—The last section is subject to the same explanation as section 352

Procedure—Not-cognizable—Summons—Bailable—Compoundable—Triable by any Magistrate.

Of Kidnapping, Abduction, etc.

Notes—The former division of this chapter of offences against the Human body have gradually led to the present. Pain or hurt of body is not necessarily a part of the offence comprised under this head. And some of these offences may be committed without any such abridgment of personal liberty as amounts to wrongful restraint or confinement—*Morgan and Macpherson.*

Of Kidnapping, Abduction, Slavery, and Forced Labour.

359. Kidnapping is of two kinds : kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person is said to kidnap that person from British India.

Kidnapping from British
India.

Scope—“The offence of kidnapping from British India, consists, according to this definition, in conveying any person out, of the protection of law without his consent vide 8 M. L. T. 91 ; (1910) M. W. 262 ; 20 Bom. L. R. 372=19 Cr L. J. 602 or the consent of person legally authorized to consent on his behalf ; or with such

when it is not freely or intelligently given, but is obtained by deception or under any of these circumstances which have been explained; (vide section 90) to invalidate a consent. This offence is sometimes committed by means of assault, and is sometimes attended with restraint. But

without being either assaulted or restrained, this offence may be committed on a child, or on a grown man or woman. The carrying of a grown up person by force from one place in British India to another, and the enslaving him within the British Territories, are offences sufficiently provided for under the heads of restraint and confinement.

'The enticing a grown up person by false promises to go from one place in British India to another place also within British India may be subject for a civil action and under certain circumstances for a criminal prosecution. But it does not come under the head of kidnapping. This offence can only be committed on a grown man by conveying him beyond the limits of the British Territories in India"—*Morgan and Macpherson*.

361 Whoever takes or entices any minor under fourteen years of age, if a male, or under sixteen

Kidnapping from lawful guardianship

years of age if a female, or any person of unsound mind, out of the keeping of

the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception—This section does not extend to the act of any person who, in good faith believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Object.—The object of this section and cognate sections is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians. 5 C. 571.

Application—This offence consists in taking a minor, or a person of unsound mind, out of the keeping of his lawful guardian, without the consent of such guardian. This mode of kidnapping, like that defined in the last preceding section, may be committed with assault or the use

criminal force, and without being attended with any restraint. A child, for example, who is decoyed from its guardians, who soon forgets its home, and who consents to remain with the kidnapper, cannot be said to have assaulted or restrained, but it is none the less kidnapped. The consent of the kidnapped person is immaterial, and it is not necessary that the taking, or enticing should be shown to be by means of force or fraud—*Morgan and Macpherson*.

Essence of the offence—The essence of the offence of kidnapping as defined in this section, is the taking of the minor out of the keeping of the guardian without the guardian's consent. 17 P. R. 1916 Cr; 4 W. R. 6, 10 W. R. 33, 3 N. W. P. 146, 95 Ind. Cas 372, 27 C. 1041; 28 Cr. L. J. 820. Motive has nothing to do with the offence under this section. 31 A. 448, 18 Ind. Cas 653.

Scope.—The section and the explanation are express and exhaustive in their terms, and to constitute the offence of kidnapping or abducting the following things must be proved. A taking and enticing of a minor under fourteen years of age if a male, or under sixteen years of age if a female or any person of unsound mind from the custody of the following persons: (1) the natural guardians; (2) the legal guardians if the natural guardian be dead or (3) a person lawfully entrusted with the care and custody of a minor. The last kind of guardians includes all persons other than those mentioned in (1) and (2), who, for the time being, may be lawfully entrusted with the care and custody of a minor, such as a school master or a friend at whose house the minor may be staying or such like persons standing in a similar degree of relationship. But this section has no application to self-constituted guardians nor to persons such as waifs or strays who are taken up and maintained by charitable institutions. 4 Pat. L. J. 74.

Takes—The word "taking" in this section is nothing but physical taking. 15 Cr. L. J. 630. The taking away must be by some overt act. 27 Ind. Cas 181. Abduction need not be forcible. 3 W. R. 9.

Minor.—"The age or mental incapacity of the person taken is a matter of fact as to whether he may have an erroneous idea of his age. 2 C. C. 154, that a girl was over sixteen, and her maturity is determined by the facts."

Lawful.—The word "lawful" means that which is opposed to unlawful, *viz* legal, proper, right, without fraud, pressure or constraint. This word does not necessarily mean that the person who entrusts a minor to the care or custody of another must stand in possession of person owing to legal duty or obligation to the mother. It is sufficient if the entrusting is effected without illegality or the commission of unlawful act by a person legally competent so to do. 4 F. 7 Ind. Cas 481. The mother of an illegitimate child

when it is not freely or intelligently given, but is obtained by deception or under any of these circumstances which have been explained; (vid. section 90 to invalidate a consent. This offence is sometimes committed by means of assault, and is sometimes attended with restraint. But

committed on a child, or on a grown man or woman. The carrying of a grown up person by force from one place in British India to another, and the enslaving him within the British Territories, are offences sufficiently provided for under the heads of restraint and confinement.

'The enticing a grown person from one place in British India to another, is not subject for a civil action or prosecution. But it does not constitute an offence can only be committed on a grown man by conveying him beyond the limits of the British Territories in India"—*Morgan and Macpherson*.

361. Whoever takes or entices any minor under fourteen years of age, if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship

Explanation—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception—This section does not extend to the act of any person who, in good faith believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose

Object.—The object of this section and cognate sections is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians. § C. 571.

Application—This offence consists in taking a minor, or a person of unsound mind, out of the keeping of his lawful guardian, without the consent of such guardian. This mode of kidnapping, like that defined in the last preceding section, may be committed with assault or the use

criminal force, and without being attended with any restraint. A child, for example, who is decoyed from its guardians, who soon forgets its home, and who consents to remain with the kidnapper, cannot be said to have assaulted or restrained, but it is none the less kidnapped. The consent of the kidnapped person is immaterial, and it is not necessary that the taking, or enticing should be shown to be by means of force or fraud—*Morgan and Macpherson*

Essence of the offence—The essence of the offence of kidnapping is the taking of a person out of the keeping of his legal guardian. *R 1916 Cr, 4 W. R. 27 C. 1041, 28 Cr* under this section.

The following are express and exhaustive definitions of kidnapping or abducting of a minor under 16 years of age out of the custody of the

following persons: (1) the natural guardians, (2) the legal guardians if the natural guardian be dead or (3) a person lawfully entrusted with the care and custody of a minor. The last kind of guardians includes all persons other than those mentioned in (1) and (2), who, for the time being, may be lawfully entrusted with the care and custody of a minor, such as a school master or a friend at whose house the minor may be staying or such like persons standing in a similar degree of relationship. But this section has no application to self-constituted guardians nor to persons such as waifs or strays who are taken up and maintained by charitable institutions. *4 Pat L J 74*

Takes—The word "taking" in this section is nothing but physical taking. *15 Cr L J 630*. The taking away must be by some overt act. *27 Ind Cas 181*. Abduction need not be forcible. *3 W. R. 9*

Minor—"The age or mental incapacity of the person taken is a matter of fact as to which the court may have no opinion or may have an erroneous opinion." *2 C. C. 154*, that even a girl was over sixteen, was no defence. *(Majority Act 37 M 567)* The majority is determined by s 3 of the Majority Act.

Lawful—The word "lawful" means that which is opposed to unlawful, viz legal, proper, right, without fraud, pressure or constraint. This word does not necessarily mean that the person who entrusts a minor to the care or custody of another must stand in possession of a person. It is sufficient if the person is a person of any age. *any* *1-40* *Ind.*

specifically punished as offences here; they merely constitute the definition of abduction. An abduction is made an offence only when it is committed with certain aggravating circumstances—*Morgan and Macpherson*; vide also 8 P. L. R. 1924; 24 Cr. L. J. 921; 22 Ind Cas 730, 15 W. R. 4

Abduction.—When a man by a promise of marriage induces a woman to leave her house, but does not marry her or get her married he is guilty of deceiving her as mentioned in this section 4 A. L. J. 482. In order to constitute an offence under this section the woman must be compelled by force or induced by deceitful means to leave her husband's home. 11 P. R. 1883, Cr.

The offence of abduction is a continuing offence and a girl is being abducted not only when she is first taken from one place to another 12 A. L. J. 91, 7 S. L. R. 128; 24 Ind Cas 599. When the accused

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out in the different sections dealing with the subject, is not *per se* an offence. 6 C. W. N. 208.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

Punishment for kidnapping.

Lawful guardianship.—A *de facto* guardian of a minor, whose *jure* guardian, is a lawful guardian, is a lawful guardian according to Mahomedan law and the mother's section regard must be to Majority Act. 37 M. terminated by a minor 768=13 Cr. L. J. 736. unmarried minor girls. under this section where father. 9 Ind Cas 511;

18 C. W. N. 484 Removal of a ward by a teacher to a distant place is an offence under this section 23 A. L. J. 10. When a person is kidnapped with the object of holding him to ransom an offence under section 363 or 365 has been committed 91 Ind Cas 240. The consent of the minor does not excuse the accused. 27 Cr. L. J. 1018.

From British India—Where the accused induced certain women
presentation that they were
Ceylon made them work
must be held to have been
taken without their consent, and the accused were guilty of an offence
under this section 6 Ind Cas 503=1910 M. W. N. 262.

Proceduro—Cognizable—Warrant—Bailable—Not-compoundable.
Triable by Presidency Magistrate or Magistrate of the first class.

364. Whoever kidnaps or abducts any person in order that
Kidnapping or abducting such person may be murdered, or may be
in order to murder, so disposed of as to be put in danger of
being murdered, shall be punished with
transportation for life or rigorous imprisonment for a term which
may extend to ten years, and shall also be liable to fine.

Illustrations

(a) A kidnaps Z from British India, intending or knowing it to be
likely that Z may be sacrificed to an idol. A has committed the offence
defined in this section.

(b) A forcibly carries or entices B away from his home in order that
B may be murdered. A has committed the offence defined in this
section.

Notes.—Where a person was abducted by the accused in order that
he might be held to ransom, and where it did not follow as a matter of
course that he was in danger of being murdered. Held that a conviction
under this section. *Cr. L. J.* 64 40-27
this section. under

Proceduro—Cognizable—Warrant—Not-Bailable—Not-compound-
able—Triable by Court of Session.

365. Whoever kidnaps or abducts any person with intent to
Kidnapping or abducting cause that person to be secretly and wrong-
with intent secretly and fully confined, shall be punished with
wrongfully to confine imprisonment of either description for a
person. term which may extend to seven years, and
shall also be liable to fine.

Notes—To support a conviction under this section, it must be clearly
proved that, at the time of the abduction, it was the intention of the accused
to secretly and wrongfully confine the person. 18 C. L. J. 578=22 Ind Cas.
187. See also 92 Ind Cas. 213=1925 Lah 614=27 Cr. L. J. 229, 7 L. L. J.
520=26 P. L. R. 733=1925 Lah 614. 73 Ind Cas 510=24 Cr. L. J.
Where an accused is charged with rape and abduction, the abduct

being an aggravating circumstances, two separate sentences should not be passed. 89 Ind. Cas 912=26 Cr L. J. 1440=1926 Lah. 114 The will of the woman may ultimately be gained over, but this will not affect the offence, when the kidnapping or abduction is with the knowledge or intention which the section mentions *Morgan and Macpherson*.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

366. Whoever kidnaps or abducts any woman with intent

Kidnapping or abducting woman to compel her marriage, &c. that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,

"and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punished as aforesaid "

Kidnaps.—A woman, marrying her minor daughter to another in the absence of her husband kidnaps the minor from the lawful guardianship of her husband 8 P R 1878 Cr Where two girls ran away from their houses and remained for nearly one or two days in the house of a woman who belonged to the caste of *Nairs* in Kumam, and no offence under this section
A person kidnapping two girls committed the offence of kidnapping committed when a girl is abducted from her mother with the consent of her mother. 16 Cr. L. J. 237=27 Ind. Cas 909 In order to sustain a conviction under this section it must be proved that the girl was taken out of

minor is kidnapped with the consent of the servant or friend. 68 Ind. Cas. 620 Paternal relatives of a minor commits a technical offence under this section when they kidnap a minor girl from the custody of mother with the object of marrying her. 5 Lah L J 377. To constitute an offence under this section the accused need not know who is the guardian of the minor. 81 Ind Cas 529=25 Cr. L. J. 1913 A person can not be convicted without a fresh charge for abduction where the original charge was for kidnapping. 31 C. W. N. 171.

section, of abducting a
to illicit intercourse,
nt or to raise the pre-
it from the abduction.

23 F R 1808

The words "illicit intercourse" mean the sexual intercourse between a man and a woman who are not husband and wife. The woman need not be a married one. 4 A L J 482. Under the Buddhist law a man cannot marry a girl under sixteen years of age without her guardian's consent and hence an intercourse between the man and such a girl is "illicit intercourse" L. B. R (1872-1892), 202 When it is proved that the accused took two minor girls from lawful guardianship with the object of seducing them to illicit intercourse, he is guilty of an offence under this section and the consent of the girl is of no avail. 49 C 905. This section applies to the case of a married woman. 45 C. 641=24 C W. N 695.

Intent or knowledge.—For a conviction under this section a special intent or knowledge is necessary. 53 P L R 1916, 67 Ind Cas. 731, 72 Ind. Cas 533; 81 Ind. Cas 529, 102 Ind Cas 552.

Charge of rape.—A charge of rape against the accused cannot be proved by the uncorroborated evidence of the prosecution. 17 P W R. 1916 Cr., 54 P L. R 1916, 73 Ind Cas. 513, 1923 Lah 238, 1924 Lah. 669=75 Ind Cas 986, but see 1923 Lah 332, 1923 Lah. 91.

Cases.—99 Ind Cas 98=18 Cr. L. J. 66, 97 Ind Cas. 960; 26 Cr. L. J 1021

Not a continuing offence.—The offence of kidnapping is not a continuing offence. When it is once complete, abetment cannot be proved against persons who have taken a subsequent part in the proceedings. 75 Ind. Cas. 297

Legislative changes.—The words within quotations at the end of the section have been inserted by Act XX of 1923

Separate offences.—Convictions under this section and section 363 are not maintainable. 93 Ind Cas 248=27 Cr L J 456 Separate sentences can be passed under s 376 and this section. 75 Ind Cas. 77; 99 Ind Cas 344 Separate sentences are not maintainable for abduction for actual rape and abduction with intent to rape. 92 Ind Cas. 850=1926 Lah 212=27 Cr. L J 238 Kidnapping and abduction are distinct

offences. 31 C. W. N. 940=45 C. L. J. 561=28 Cr. L. J. 805=104 Ind. Cas. 245=1927 Cal 644.

Proceduro.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session

366A. Whoever, by any means whatsoever induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

Legislative changes.—This section was added by Act 20 of 1923 in order to give effect to the international convention for the suppression of the Traffic in women and children signed at Geneva on behalf of the Governor General in Council on the 28th day of May 1922.

Proceduro.—Cognizable—Warrant—Not-bailable—Not compoundable—Triable by Court of Sessions

366B. Whoever imports into British India from any country outside India any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, and whoever with such intent or knowledge imports into British India from any State in India any such girl who has with the like intent or knowledge been imported into India, whether by himself or by another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Legislative changes.—Vide notes under s. 336 A.

Proceduro.—Cognizable—Warrant—Not-bailable.—Not-compoundable—Triable by Court of Sessions.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement

Scope—This section refers to some other party who assists in concealing any person who had been kidnapped and does not refer to the kidnappers 6 W. R. Cr 17 The withdrawal of a person from the actual observation of others by removal or otherwise is necessary to constitute the offence of wrongfully concealing a person kidnapped or abducted, the mere giving of false information about such person not being sufficient 10 P. R. 1874 Cr See also 6 Bom. L. R. 785 : 7 W. R. 56, 5 N. W. P. 133, 5 N. W. P. 189, 15 C. P. L. R. 185 To constitute the offence, the concealment or confinement must be by person who knows of the kidnapping or abduction, and must also be wrongful A concealment of one who has escaped from slavery or who endeavours to avoid his kidnappers who are in pursuit of him is no offence This mode of abetment by aid is punishable as the substantive offence which is abetted *Morgan and Macpherson*

Procedure—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

369 Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Separate Sentences.—The offence described in s 363 includes that which is described in this section and as such should not be punished separately 8 W. R. 35 Cr., see also 8 W. R. 84.

See also 14 Ind. Cas. 601, 27 Ind. Cas. 551.

Procedure—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Soops—By this section the sale or disposal of any "person" as a slave", that is, on the pretext of his being in a condition of slavery, is made an offence. The clause extends not only to those immediately concerned in the contract of sale or disposal, but extends to those who aid them by knowingly conveying or removing the person who is the subject of the bargain, or knowingly receiving or detaining such person as a slave. This section in general prohibits the traffic in all human beings, whether children of tender years or adults—*Morgan and Macpherson*.

Slavery—Where a person transferred to another his rights over a girl of 13 years for 25 years, whom he described as her *villati*, held, that both were guilty under this section 7 M 227—1 Weir 354, see also U B R (1897-1991 Vol I. 337. But where a girl is bought or sold for purposes of marriage, no offence is committed under this section. 20 P. R. 1884, 19 P R 1867

Procedure—Not-Cognizable—Warrant—Bailable—Not-Compoundable—Triable by Court of Session

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Soops—This section is for ...

Procedure—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session

372. Whoever sells, lets to hire, or otherwise disposes of any "person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be" employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Selling minor for purposes of prostitution, &c.

" *Explanation I.*—when a female under the age of eighteen years is sold, or let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II—For the purposes of this section 'illicit intercourse' means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities of both such communities, as constituting between them a quasimarital relation.

Ingredients of offence.—The ingredients of an offence under this section are (1) that the minor sold or otherwise disposed of must be under the age of sixteen, (2) there must be a sale or other disposal, (3) it must be with the guilty intent described in the section. A W N. 1900, 133. In order to constitute an offence under this section there need not be a disposal tantamount to a transfer of possession or control over minor's person 1 M 164. The word "dispose of" has many meanings. It denotes *inter alia* "to bestow for an object or purpose, to make a change in the circumstances", it does not necessarily imply that there has been a transfer of possession nor do the terms "sell or hire" necessarily connote a present or immediate transfer of possession. Where a transfer of possession is contemplated, the offence is complete on proof of the sale or hiring without any proof of transfer of possession 9 Weir 359 (P. B.). Where a minor daughter is dedicated in the service of a temple she becomes incapable of marriage. The change in the circum-

stances within the terms of this section. *Ibid*;

B. 737, 6 B. H. C R Cr. 60; 15

But where minor girls were being

taught singing and dancing and were made to accompany their grand mother a *dasi* to the temple to take part in the ceremonies of the temple with a view to qualify them as *dasis held*, that the facts proved did not amount to a disposal under this section 1 Weir 161. But the dedication

illustration as dancing
this section contem-

Prostitution.—In the absence of any special custom it is unlawful for a guardian to enter into a transaction by which a minor may be transferred to another as his concubine 1 Weir. 373. This section and section 373 declare, as a matter of general law, that no minor under the age of majority, shall be devoted to a life of prostitution employed in, nor used for, any unlawful or immoral

placed in a position in which it is likely such person will be employed in, or used for any such purpose. This rule, which is obviously suggested by the highest considerations of justice and morality, must control the exercise of all private law, even in those cases in which the private law assumes to vindicate itself on the serious plea of religion. 1 Weir. 359. The word "unlawful" in this section must be *eiusdem generis* with immoral. Rat. Un Cr C 340. The offence of selling or buying a minor for the purpose of prostitution, is committed even when the minor, prior to such transaction, has been leading an immoral life. 8 Bom. L. R. 236—3 Cr. L. J. 334.

Disposes of.—The word "disposal" shows that the person disposing has some control over the minor. 48 M. L. J. 593=86 Ind. Cas. 804. A change in the circumstance of the minor is a disposal. 1 Weir 359 (F B)

Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class

373. Whoever, buys, hires, or otherwise obtains possession of, any "person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be" employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation 1—Any prostitute, or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years, shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used

has the same meaning as in

Scope and object.—The mischief against which this section is directed, is a trafficking in the prostitution or other unlawful and immoral use of minors. It is not intended to make punishable the buying, hiring or otherwise obtaining possession for a single act of sexual intercourse with the person so obtaining possession. 1 Weir. 377=5 M. H. C. 473. Before an offence under this section can be

* Substituted by Act 18 of 1924.

established it must be proved (1) that a minor under sixteen years of age was bought, hired or otherwise obtained possession of by the accused, and (2) that the minor was bought, hired or otherwise obtained possession of by the accused with the intent that the same minor while under sixteen years of age shall be employed as, and for the purpose of, said minor, used for an

purpose of an immoral purpose. The offence would be, and is complete as soon as the buying, etc., by the accused and the guilty knowledge or intent on his part are proved, though the person bought may not enter upon prostitution until years after she had attained maturity, or may never enter upon such profession at all. 18 A. 24, see also 23 M. 159. It is not essential to the offence, under this section, that the buying, hiring or otherwise obtaining the possession of should be from a third person. The language of the section is quite applicable to an agreement or understanding come to with the minor, without intervention of a third person, and the vice against which the section is directed is not of less enormity in the latter case. But to bring a case within the section, it is essential to show that the possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having the possession, whether ostensibly, for a purpose or not. 5 M. H. C. 473-1 Weir 377. This section is not applicable where the accused solicits a girl merely to have sexual intercourse with him. 7 N. W. P. 295. The words "otherwise obtains possession of" must be read together with the preceding words, and the accused is not punishable under this section for mere enticement. 11 C. P. L. R. Cr. 6.

Procedure.—Cognizable—Warrant—Not Bailable—Not Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Notes.—Compulsory labour is by various laws now in force permitted. Under the General Exceptions of the Code nothing is an offence which is done by—
Where there is no law to
by force, or by threats which
injury to labour against his
person, see also 19 C. 572;

Procedure.—Not Cognizable—Warrant—Bailable—Triable by any Magistrate.

Of Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

First.—Against her will

Secondly —Without her consent.

Thirdly —With her consent, when her consent has been obtained by putting her in fear of death or of hurt

Fourthly —With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married.

Fifthly.—With or without her consent, when she is under "fourteen" years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under "thirteen" years of age, is not rape.

Legislative changes.—Originally the words "ten" was used for the words "fourteen" and "thirteen" in the clause "fifthly". By Act 10 of 1891 the words were substituted by word "twelve". Now the words "fourteen" and "thirteen" have been substituted by Act 29 of 1925.

Consent.—Sexual intercourse by a man with a woman without her free consent, i. e. a consent obtained without putting her in fear of injury, amounts to rape 1 W. R. Cr. 21. Where there is consent of the girl no rape has been committed. A. W. N. 1884, 91 ; 12 Cr. L. J. 584.

Penetration.—To constitute rape penetration is sufficient. 19 P. R. 66 Cr. Vaginal penetration is sufficient for conviction. 1923 Lah. 536 ; see also 100 Ind. Cas. 116.

Jurisdiction.—The offence of making a false charge of rape is triable exclusively by the Court of Sessions. Rat. Un. Cr. C. 953.

Exception.—18 C. 49.

Attempt.—A little boy of 12 years though physically incapable of committing the offence of rape can nevertheless be held guilty of an attempt to commit it. 42 Ind. Cas. 175 ; see also Rat. Un. Cr. C. 865. As regards attempt to rape, vide, 45 P. W. R. 1910, 1 Weir 383 ; 103 Ind. Cas. 199 = 28 Cr. L. J. 663 = 1927 Lah. 580 = 28 Cr. L. J. 575.

The presumption of English law that a boy under 14 years of age is incapable of committing rape has no application in India 37 A. 187-13 A. L. J. 254

Wife.—Vide 18 C. 49.

Effect of amendment.—Notwithstanding any things contained in this section sexual intercourse by a man with his own wife is not rape although the wife has not attained the age of thirteen years, if he was married to her before the 23rd September, 1925 and she had attained the age of twelve years on that date.—vide s. 4 of Act 39 of 1925.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, "unless the woman raped is his wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both "

Legislative changes.—The words within quotations have been inserted by Act 29 of 1925.

Conviction.—Conviction for the offence of rape on the uncorroborated testimony of the complainant would be most dangerous 1924 Lah. 669, 23 Cr. L. J. 475.

Sentences.—The sentence depends upon the atrocity of the crime. 52 Ind. Cas. 413, 82 Ind. Cas. 142

Proof.—Vide 75 Ind. Cas. 77=24 Cr. L. J. 877, 9 Lah. L. J. 337, 67 Ind. Cas. 827=23 Cr. L. J. 475, 89 Ind. Cas. 1056=26 Cr. L. J. 1488, 67 Ind. Cas. 827, 106 Ind. Cas. 349; 75 Ind. Cas. 986=25 Cr. L. J. 74, 43 Ind. Cas. 443, 33 Ind. Cas. 630=17 Cr. L. J. 150, 75 Ind. Cas. 986, 106 Ind. Cas. 348, 97 Ind. Cas. 180, 9 Lah. L. J. 384, 1923 Lah. 238; 73 Ind. Cas. 513, 25 Cr. L. J. 1200

Procedure.—If the sexual intercourse was by a man on his own wife—Not-cognizable—Summons—Bailable—Not compoundable—Triable by a Court of Session. In any other case—Cognizable—Warrant—Not bailable—Not-compoundable—Triable by Court of Session.

Of Unnatural Offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Consent.—To establish an offence under this section, the consent of the party upon whom the offence is committed is quite immaterial. *In re Mathuranath Ghose* 1 G J. 43. A mere filthy and indecent assault, without proof of attempted or intended penetration would not amount to an offence under this section. 1 Weir 383, A W N 1884, 25. A conviction can be safely based on the uncorroborated testimony of the boy, if it is not otherwise doubtful. 42 P R 1914 Cr, but see 73 P. L. R. 1918. It is doubtful whether the act of having connection with a woman in her mouth would amount to an offence under this section. 1 Weir 382.

A sentence of whipping is far more suitable for a juvenile offender convicted of bestiality than a sentence of imprisonment. 3 P. R. 1884 Cr

Carnal Intercourse—*Coitus per se* is an offence. 26 Cr. L. J. 945—1925 Sind. 286

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

Scope of the chapter.—The offences defined in this chapter is made punishable on the ground that they are violations of the right of property. But the right of property is itself the creature of law. It is

OF HAS NOT BEEN VIOLATED. For example, A, without Z's permission, shoots snipes on Z's ground, and carries them away, here if the law of civil rights grants the property in such birds to any person who can catch them, A has not, by killing them and carrying them away, invaded Z's right of property. If, on the other hand, the law of civil rights declares such

penal law, which is added as a ground to the substantive civil law, must vary also—*Morgan and Macpherson*

Of Theft.

378- Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving, effected by the same act which effects the severance, may be a theft

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be given either by the person in whose possession the property is, or by any other person having for that purpose authority,

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith, and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and, if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit

though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.

(k) Again, if A having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

She gives A money, food, and husband. Here it is probable that A was induced to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Essentials of offence—To constitute the offence of theft the prosecution must establish (a) that there was dishonest intention to take property, (b) that the property was moveable property, (c) that it was taken out of the possession of another, (d) that it was taken without the consent of that other, and (e) that there was removal of the property in order to accomplish the taking of it. 54 Ind. Cas 992

Intending dishonestly—The intention is the gist of the offence. There must be an intention to take dishonestly. 3 W R Cr. 2, 63 P. L. R. 1903, 2 Bom L R 752, 5 M H C. App 37, 1 Weir 411, 2 Pat. L. T. 583, 39 Ind Cas 1000, 38 Ind Cas 318, 29 C W. N. 1011—26 Cr L J 1505, 52 C. 1015, 28 Cr L J. 531. A charge of theft will lie even where there is no intention to assume the entire dominion over the property taken or to retain it permanently. Where a person removes another's property under a mistake of fact and in ignorance of the law, believing that he has a right to take such property, he is not guilty of theft, as his intention is innocent and not criminal. 15 B 344. Rat Un Cr C. 920, 1 Weir 411, 1 L B R 334, 3 C W N. 332. But a mere assertion of a claim of right is not itself a sufficient plea. 4 Bom. L R. 936, 7 B L R. App. 55—16 W R Cr 18, 16 W. R. Cr 78. 16 W. R. Cr. 75. The assertion must be of a *bonafide* claim of right to Bom. L. R. 160, 14 A L J 399; 20 C W N 1270, 1922 Pat 10—1922 P. 265, 44 M L J 138, 4 Pat. L. T. 608, 1 P L T. 121, 28 C L J 120, 16 Cr. L. J. 458, 16 Cr L J 715, 23 C. W. N 385, 2 Pat L T 394; 25 Cr. L. J 809—81 Ind Cas 345, 4 Bom L R 56, 28 M. 304, 14 C. W. N 408; 7 W R Cr 57, 15 W. R. Cr. 57, 40 P W R. 1413 Cr; 1924 Pat. 125, 1924 Rang 72, 96 Ind Cas 879, 27 Cr L. J 343; 99 Ind Cas 104; 103 Ind Cas 840

Moveable property.—Moveable property only and no other description of property can be the subject of theft. Moveable things which are of small intrinsic value became very valuable when they show a title to property or constitute the evidence of legal right. By what is written upon it the material may become a title deed or mortgage deed, or a bond, bill of exchange, promissory note, etc (Vide 72 Ind Cas. 526—24 Cr L J 417, 83 Ind Cas 889, 89 Ind Cas 893) The cattle may be subject of theft 1 Weir 405, A W N. 1888, 97, 17 Cr L. J 239. Fish in an enclosed tank belonging to a municipality are 'restrained of the natural liberty and liable to be taken at any time, according to the pleasure of the owner, and are, therefore, upon principle, and

according to the better opinions, subjects of theft " 10 B. 193; U. B. R. 1892-18961 Vol. I. 234. 1 Weir 384; 15 Cr. L. J. 77; 5 S. L. R. 122. But fish in a navigable river where no *jalker* right exists are not subject of theft 19 W. R. Cr. 47; 20 W. R. Cr. 15, 16 W. R. Cr. 78. 11 P. R. 1878; 5 M. 390; 1 Weir 384; 15 C. 402; 15 C. 390 N; 15 C. 392, 24 M. 81. Fish in an inclosed tank can be subject of theft 36 M. 472; 10 B. 193; 105 Ind. Cas. 826; 53 M. L. J. 759=1927 M. W. N. 788. Valuable securities are moveable properties and may be the subject of theft. Rat Un Cr C 43. Forcibly carrying away crops is an offence under this section. 8 W. R. Cr. 59, 43 Ind. Cas. 404. A human body, whether living or dead except human bodies or portions of such, or mummies, preserved in museums or scientific institutions, cannot be the subject of theft as defined in the Penal Code 25 A. 129=A. W. N. 1902, 191. The prevailing view in England and America is that water in a pond or running in a channel is not the subject of larceny 1912 M. W. N. 119. But water when conveyed in pipes and so reduced into possession can be the subject of theft. 45 A. 680=21 A. L. J. 654, see also 75 Ind. Cas. 159. A boat may be subject of theft and it does not cease to be moveable property. 16 W. R. Cr. 63; 8 W. R. Cr. 32.

Possession—In theft, as it is here defined, the object of the offender always is, to take property which is in the possession of a person out of that person's possession. The Code does not admit a single exception to this rule " *Morgan and Macpherson*. Where in the presence of owner, a bullock follows a cow and disappears and is not found after search, the owner loses possession of it and there could be no offence of theft in respect of it. 18 Cr. L. J. 300=38 Ind. Cas. 332. There must be an independent finding as to who was in actual possession of the land and crops, in cases of theft of crops. 17 Cr. L. J. 81=31 Ind. Cas. 673.

... he accused no offence is committed of the same by the accused 17 Cr.

L. J. 1058. Accused Nos. 2 and 3

... ment of land revenue, the Mamlatdar proceeded to their house and made a *panchnama* declaring their buffaloes to be under attachment. At the instigation of accused No. 1, the other accused untied and removed the buffaloes. Held that the accused were

... offence under this section. 1923 Cal. 594. Where the accused takes possession of his own property forcibly he cannot be convicted under this section. 42 M. L. J. 490. Where crops were sown by the complainant, the accused commits an offence under this section by removing them and

the question of title of the complainant is not at all material in the case. 19 A. L. J. 961. Where a property has not been validly attached, the accused commits no offence in removing them 59 Ind. Cas. 411. Where a creditor forcibly takes his debtor's goods out of his possession against his will in order to satisfy his debt he is guilty of theft. 25 Cr. L. J. 22 C. 107. 18 A. 88, A. W. N. 5. Where the lands of a minor are sown with crops thereon, if the guardian goes and takes forcible possession of the crops, he commits an offence under this section 77 Ind. Cas. 237. The accused has committed no offence by removing bricks from a heap that had been lying untouched for 8 years 3 Bur. L. J. 1957. A joint owner can be legally charged with theft in respect of joint property A. W. N. 1881, 115, 7 M. 557-2 Weir 436, 12 P. R. 1889, *contra*, to A. L. J. 527, see also 25 M. 481, 19 M. W. N. 106, 483. The offence in such a case consists in conversion of joint possession into separate or exclusive possession. 11 M. 186-1 Weir 403, 12 P. R. 1889 Cr., 1 Weir 408, 1914 M. W. N. 483.

A tame peacock may be the subject of theft, although it may not be kept in confinement A. W. N. 1891, 41, see also 27 M. 551, 1914 M. W. N. 368, 5 S. L. R. 122. The removal of animals grazing on open lands where they are not attached to them amounts to theft 4 Bom. L. R. 5) Vol. I 228.

the supervi-
t. H. C. R. 74.
4 M. 448-1 Weir. 412, 10 B. H. C. R. 74 N. But such removal is not theft where it was not proved that the swamp was so guarded by the Government as to enable the accused to know that it was in the possession of the Government 1 Weir, 412. An accused can be convicted for removing his own property where that property is in charge of a third person and for which the person is accountable Rat. Un Cr C 343. Where the complainant washed a carpet at the village tank and hung it up there to dry, the carpet was in the possession of the complainant. Rat. Un Cr C 293. Even if a transaction be one of pledge between two parties, still, if the pawner takes away the property pledged dishonestly without the knowledge of the pawnee, it is theft U. B. R. (1892-1896) Vol. I, 231. If the materials of a house are taken away dishonestly, the act is theft, even though the house is left uncared for. U. B. R. 1904 1st Qr. Penal Codes 7. No theft can be committed in respect of a property, where the owner has given up possession of it 4 M. H. C. App 30. An owner retaking property, which was illegally distrained, cannot be convicted of theft 1 Weir, 422, 1 Weir. 421. Where the accused cut and removed certain crops under attachment in order to save them from being washed away, *held*, that the mere removal, without proof of dishonest intention would not constitute the offence. 1 Weir 423. Edible bird's nests are not in the possession of

any body until they are collected. 4 L. B. R. 275. Taking away cattle by one co-owner from the possession of the other not dishonestly is not an offence. 103 Ind. Cas. 847=1927 Lah 650=28 Cr. L. J. 767.

Husband and wife—There is not the same union of interest bet-

possession of her husband does not amount to the offence of theft 8 B. H. C. Cr. 11, Rat. Un Cr. C. 44

Without consent.—An essential ingredient of theft is the taking of

506 Where a servant the assistance sought by removal of the property by constitute the offence of theft, in as much as the owner has knowledge of the removal. 4 C. 366 = 3 C. L. R. 625.

Removal of property for taking.—Where crop was dishonestly cut and removed by the order of the accused, he himself being present: *Held* that the accused was guilty of an offence under this section. 43 Ind. Cas 404=19 Cr. L. J. 404. The act of cutting the string by which a *pass* was fastened to a woman's neck and forcing the ends apart constitutes a sufficient moving to bring the act within the purview of this section. 29 P. R 1917 Cr=37 P W. R 1917 Cr. In order to constitute theft, it is sufficient if property is removed against his wish, from the custody of a person who has an apparent title, or even a colour of right to such property 27 C 501=4 C. W N. 480. Where
y found in the possession of the
offence under this section. Rat.
dishonestly, that is, with the in-
vner of the possession thereof for
Where the intention of
use or to make it his
has been committed.
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ould be permanent or

... there should be wrongful
the owner, but there
25 C. 416-2 C. W.
172-1892), 399; 1 P. R.

1827; 1 Bom L. R 515.

Explanation 1—If the property be attached to the earth, the mere severing it is not theft to constitute theft of any kind, there must be, as is noticed in the definition and hereafter, a moving of that thing after severance. The severance as such, only puts the thing into that condition in which a theft can be committed of it. In many cases things attached to the earth may be severed from it without being moved and then, if there be no subsequent moving, there is no theft. If indeed the same act which effects the severance also

the case supposed in the illustration, cases things attached to the earth in moved and then if there be no *Morgan and Macpherson* Where provided that if the tenant cut an compensation at a certain rate and it cut some trees in order to injure the landlord. *Held* that although the tenant was in the possession of the land he committed theft by severing the trees from the ground as they were in the possession of the landlord 27 C L J 228. Theft of the trees will be committed only when they were cut to remove them from the possession of the owner, and not when the cutting was merely to annoy him. 29 Ind. Cas. 672-16 Cr. L J 544 Where the trees are the property of the zamindar the tenant commits an offence under this section by cutting and removing them 42 A 53-17 A L J 974, A W N. 1881, 73; see also 5 M. H. C. App. 36; 20 Bom. L. R 572, 39 C. 758.

Earth, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth, are moveable property capable of being the subject of theft. Whoever, therefore sever such earth from the earth with the dishonest intention specified in this section can be said to commit theft 13 B. 702.

Explanation (2)—The moving of a tree by the same act which effects its severance may constitute a theft. 1 Weir 383-5 M. H. C. R. App 36.

Summary procedure.—See 20 C. W. N. 1212.

379. Whoever commits that shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cases.—Where it appeared that a landlord had jointly cultivated land with a non-occupancy tenant and had cut and removed the crops, held that

When a person offers to take any gratification on account of helping a person to recover property stolen from him, and, on receipt of the gratification, points out where the stolen property is concealed, he may be properly convicted of theft in the absence of any evidence to show that any one else had committed theft. L. B. R. (1872-1892), 449, see also L. B. R. (1872-1892), 461.

Where the thief has restored the property the fact may well be taken into consideration in punishing him. L. B. R. (1893-1900), 226

A person who dishonestly misappropriates certain cattle commits the offence of theft and not criminal misappropriation 7 C. P. L. R. Cr. 34.

The possession of stolen property may be evidence of offences under this section. 6 Bom. L. R. 1093.

In order to raise legitimately the presumption of theft from possession of stolen property, the possession must be exclusive and recent. 1929 S. 9.

Fish confined to ponds which are caught by baling the water out can be subject of theft 1928 Mad. 20

Removal of crops knowing them to be attached amounts to theft. A. I. R. 1928 S. 68

A person who steals a buffalo and subsequently kills it cannot be convicted both of theft and mischief 14 C. P. L. R. Cr. 149.

The law does not seem to contemplate that a thief should be more severely punished, because he renders the recovery of the stolen property impossible L. B. R. (1893-1900), 633

The accused, being an inmate of his uncle's house, broke open a chest and took out money from it Held, that he was not liable to be convicted under s 457 but under s 379 6 N. W. P. 301

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by any Magistrate

380. Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

Essential for the offence—The essential point in the offence of theft in a building is that the property should be under the protection of the building and the offence may be committed by the owner of the building. Hence, a person from being committed by him in his own building is an aggravated form of the offence mentioned in s 379 and the culpability is not diminished

by the presence of the owner. Rat. Un Cr. C. 56 A cattleshed has been held to be "a building used for the custody of property." Mad. H. C. R. Nov. 24, 1866. Theft by a boatman on board comes under this section. 8 W. R. Cr 32 Theft by constables of property from the house they were employed to guard is punishable under this section. 3 W. R. 29. In order to convict a person under this section it need not be shown that the prisoner entered the building unlawfully. All that is necessary to constitute an offence of theft in a building is that the property should be under the protection of the building 24 W. R. Cr. 49 A theft from a verandah, which is outside the house, is not theft in a building 1 Weir. 435. But theft of property in a verandah may be theft within a building, when the verandah forms part of a building which is itself used as a human dwelling or for the custody of property. 1 P. R. 1881 Cr. But a railway carriage or a brake-van is not a building, tent or vessel, used as a human dwelling or for the custody of property. 1 Weir 436 (1), 1 Weir 436 (3) Where rice was stolen, when it was being carried in a boat, *held* that the accused was guilty under s 379 and probably also under this section. 1 Weir. 436 Building means some structure intended for affording protection to the person dwelling inside it. 100 Ind Cas 120=28 Cr L. J. 284=5 M L J. 143, see also 1929 S. 17 A person cannot be convicted both under this section and section 457 when house breaking is immediately followed by theft. 96 Ind. Cas. 528=5 Pat. 464=27 Cr L. J. 976=1926 Pat. 367.

381. Whoever, being a clerk or servant, or being employed

in the capacity of a clerk or servant,
 Theft by clerk or servant, of property in possession of master. commits theft in respect of any property in the possession of his master or employer,
 shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

Soope—Property is in the possession of the master or employer not only when it is in his actual manual possession, but also when it is in the possession of a clerk or servant on his account. And a person employed temporarily, or on a particular occasion in the capacity of a clerk or servant, will it seems, come within the terms of his section. if the master buys goods and sends his servant to receive them and the servant dishonestly carries them away, he may, it seems, be punished under this section. The master has the possession of the goods, when they are received by the servant on account of the master and being thus in his possession, they are, within the meaning of this Code, in the master's possession. *Morgan and Macpherson*. The mere fact of secret removal of an article does not prove dishonest intention. 5 Lah. 56=81 Ind. Cas. 185; see also 41 C. 433.

Clerk or servant—An unpaid apprentice is a clerk or servant but an unpaid boatman is not a servant 157 P. L. R. 1905=50 P. R. 1905 Gr.; 8 W. R. Cr. 32. The accused, the owner of a cart was engaged to cart tamarind fruits from a forest to the complainant's house. He took certain fruits from the cart on his way to the complainant's house. *Held* that he was guilty under this section. 1 Weir. 43 Where *barkandases* were charged with having stolen placed in the police treasury buildin guard *held* that they should have b R. 55, see also U. B. R. (1897-1901) vol 1, 75; 9 W. R. Cr. 37

Object.—It should always be borne in mind that, in the absence of extenuating circumstances properly established, larcenies by servants from their masters are aggravated forms of offence by reason of the relation between the parties, and are intended by law to meet with more severe punishment than mere ordinary theft A W N. 1887 54 In the absence of evidence to the ownership of stolen property, a conviction under this section cannot stand 16 Cr. L. J. 640=30 Ind. Cas 464.

Abetment.—Vide 64 Ind. Cas 510.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd class.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine

Illustrations.

(a) A commits theft of property in Z's possession, and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hunting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket having posted several of his companions near him, in order that they may restrain Z if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Scope—Even though there is every reason to surmise that the accused were in a certain place for the purpose of committing theft, section requires that actual theft shall be committed. 1923 Lah. 512;

Ind. Cas. 434. 25 Cr. L. J. 386. A mere attempt to commit theft after such preparation for causing death or hurt etc. is not punishable under this section — *Morgan and Macpherson*. 343.

Procedure — Cognizable — Warrant — Not-bailable — Not-compoundable — Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Extortion

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion".

Illustrations.

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's fields unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

Section 384. Extortion by putting a person in fear of injury to his person or property.

When the possession of a person's property is obtained by means of such fear of injury to his person or property as does not amount to an offence of extortion is distinguished by the fact that it is committed by consent, and not without consent, and by this feature that the offender's intention should be to take advantage of the fear of injury to the person or property of the offender.

to the fear of instant death or personal hurt which is part of the offence of robbery—*Morgan and Macpherson*, 343. Where a person through fear, offers no resistance to the carrying off of his property, but does not deliver any property either to the prisoners or to any one else, the offence committed is robbery and not extortion. 5 W. R. Cr. 9

Extortion—*act giving*
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 threat should be used, and the property received by the one and the same person. It may be
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 Weir 440.
 Weir 441.

Put any person in fear of any injury—The wide interpretation of the word "injury" must be borne in mind, (See section 44). Whether a person has in fact been put in fear of injury is a matter which a Court must decide. The age, sex and situation of the person threatened may properly be taken into consideration. It seems necessary to constitute the offence that the persons threatened should be actually put in fear; upon the whole of the facts, however, if there is reason enough to say that similar circumstances would ordinarily excite fear in persons of the same age etc., as the person threatened, the Court will not too easily listen to the suggestions or evidence adduced to show that the passion of fear was not in truth aroused. Nor on the other hand, considering that the proof that he was put in fear will often mainly be the evidence of the person threatened, and that exaggerated if not the false version of the occurrence are not improbable, should the charge of extortion be considered as established without a cautious investigation—*Morgan and Macpherson*, 345. The tenor of a criminal charge is fear of injury within the meaning of this section. Extortion may be equally committed whether the charge is false or true 7 W. R. Cr. 28. The making use of oral or supposed influence by a member of a certain establishment to induce other members of that establishment to give him money against their will, threatening in case of refusal the loss of their situation is extortion. 18 W. R. Cr. 17. Where there was no proof that any such fear of injury was caused as contemplated in this section, or that payment of money was induced thereby and it was shown that the accused might have demanded payment under a *bonafide* claim of right, held that a conviction for extortion was not sustainable. 3 B. H. C. Cr. 45.

To any other.—The injury which excites fear may be threatened to the person put in fear or any other person. Elsewhere the expression usually is in similar cases “any person in whom he is interested” The illustration (c) puts a threat to Z concerning Z’s child. But from the generality of the expression, it seems that no tie of relationship is requisite. If in fact the fear of injury is excited, it matters not that another person, be he who he may, is the supposed object of such injury. And it is not apparently essential that there should be a well-founded ground for apprehending that injury will be sustained by any person. For if a person is put in fear and if this is done not by accident or without design but intentionally, that part of the definition is fulfilled—*Morgan and Macpherson*, 345.

Thereby induces the person so put in fear to deliver.—The essential ingredient in extortion is, that the offender dishonestly induces the person put in fear to deliver property. The Court must see sufficient reason to believe that in consequence of the putting in fear and in accordance with the intention of the offender, a dishonest transfer of property has been brought about that the delivery has been caused by the threats, etc., of a person who had the intention of causing wrongful loss to the person put in fear, or wrongful gain to himself or to some other person. *The definition of extortion*—

as to the intention of the offender. The subjects of extortion are, it seems, the same as the subjects of theft, although the word “moveable” is not used in the definition—*Morgan and Macpherson*, 345.

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of them. *Morgan and Macpherson*, 346.

Picketing—Realising fines by picketing is an extortion under this section. 25 Cr. L. J. 60; 20 A. L. J. 877, 45 A. 137.

If all that a man does is to promise to do a thing which he is under no legal obligation to do and to say that if money is not paid to him he

A *nikah* khawan is not bound to read a *nikah* for a person unless he chooses to do so and it is certainly no offence for him to demand any fee he takes for doing so. 4 Lah. 179.

Before a person can be said to put any person in fear of any injury of that person, it must appear he has held out some threat to do or omit to do what he is legally bound to do in future. 21 A. L. J. 850.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

Criticism—Notwithstanding the circumstances that there is something approaching to bodily injury (putting in fear of injury) in extortion the punishment which may be awarded is not greater than for theft. The theft of a thing, that is, the taking of it dishonestly without consent, will not usually be an offence of such baseness as the extortion of it, that is, the causing its delivery by a person who consents to deliver it, because he is put in fear and dares not withhold his consent. Extortion would appear except from the wide range given to this offence by the expression "fear of injury" to be a more grave offence and to deserve in its graver from a heavier punishment—*Morgan and Macpherson*, 346

Fear of injury.—The definition of extortion requires that the person should in fact be put in fear of injury and that the object (delivery of property etc.) should be accomplished. It must therefore be proved that the person was put in fear of injury, whether an injury of body, mind, reputation or property, to himself or another,—that the act by which this fear was excited was intentionally done by the accused person, that the property was delivered to the accused, or according to his direction to any other person or put in any place by his orders,—and that this was done "dishonestly", as to which a strong inference will arise on proof of the former matter that a dishonest intention existed—*Morgan and Macpherson*, 347 See also 15 A. L. J. 127; 35 Ind. Cas. 971, 28 A. L. J. 877.

Extortion and cheating—Although there is a common feature between the offence of extortion and cheating yet they cannot be regarded as two aspects of one offence 1928 Bom 346.

Robbery or Extortion—If it is doubtful whether a particular act of extortion amounts to robbery or not the offender may nevertheless be convicted upon a charge of extortion. For this and other sections under the present head are not to be read, as if the words "unless the offence shall amount to robbery", or any like words were added. The definition of the over offence, "unless the offence shall amount to robbery", is not applicable to this division. The offence may amount to robbery. If the case is doubtful, the proper course is to convict the offender of the crime which, without doubt, he has committed, namely extortion and to punish him for it. In such a case there is no necessity for resorting to the provision in section 72.—*Morgan and Macpherson*, 347

Procedure.—Not cognizable—Warrant—Bailable—Not-

able—Triaible by Court of Session Presidency Magistrate or Magistrate of 1st or 2nd class.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—A distinction between the inchoate and the consummated offence, is recognised. The attempt to commit extortion has proceeded so far towards completion that a person has been put in fear of injury; or that there has been an attempt to excite such fear; but the offence is incomplete because there has been no delivery of property, etc. The court must be satisfied that the putting to fear is with the intention of extorting a delivery of property—*Morgan and Macpherson* 348. For the purpose of this section, it is necessary that the accused should have put some person in fear of injury in order to extort some property from him. "Injury" includes only such harm as may be caused illegally to a person's mind, body, reputation or property. 44 Ind Cas. 973—19 Cr. L. J. 445. Further it must be one which the accused could himself inflict or cause to be inflicted. 48 M. L. J. 190—28 Cr. L. J. 755—86 Ind Cas. 339. This section does not expressly provide for the punishment of an attempt at extortion. 98 Ind Cas. 60—27 Cr. L. J. 1213—A. I. R. 1917 Pat. 89.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triaible by Court of Session, Presidency Magistrate or Magistrate of 1st or 2nd class.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—Some of those things which come within the definition of "extortion", are distinguished by a description from the remainder, and a special punishment is provided for them. These are extortion of grievous hurt. Such extortion is provided for when it is at the time of committing it in the and the fear is of instant death, etc.—

Procedure.—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triaible by Court of Session.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope—The attempt to commit the aggravated extortion made punishable by the preceding section, is here punished. *Morgan and Macpherson*, 348. The feigning of an attempt to commit suicide in order to extort money is an offence under this section, 1 Ind. Jur. N. S. 423. Vide 6 L. B. R. 160 = 19 Ind. Cas. 167, 17 Ind. Cas. 800.

Procedure.—Not-Cognizable-Warrant-Not-Bailable-Not-Compoundable-Triable by Court of Session.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, any offence punishable with death or transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

Scope—Here as in s. 386, a heavier punishment is provided for extortion, when it is committed with certain circumstances of aggravation. The expression "in fear of an accusation" probably applies to threats of charging a person falsely before a judicial tribunal or some public authority with the commission of an offence.—*Morgan and Macpherson* 349.

Offence.—The word "offence" denotes a thing punishable under the Code, or under any special or local law as defined in ss. 41 and 42 of the Code, See s. 40 supra.

Procedure.—Not-Cognizable-Warrant-Bailable-Not-Compoundable—Triable by Court of Session.

389. Whoever, in order to the committing of extortion, puts, or attempts to put any person in fear of an accusation against that person or any other, of having committed, or

attempted to commit, an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Procedure.—Not-Cognizable-Warrant-Bailable-Not-Compoundable-Triable by Court of Session.

Of Robbery and Dacoity.

Robbery.

390. In all robbery there is either theft or extortion.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person, death, or hurt, or wrongful restraint, or fear of instant death, or of hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, or of instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being, at the

time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying, "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees. This is extortion, and punishable as such, but it is not robbery, unless Z is put in fear of the instant death of his child.

Robbery.—The offence of robbery is distinct from theft or extortion, but in every robbery, either the offence of theft or the offence of extortion will be committed. It must not be supposed that what is robbery cannot be extortion, or that what is extortion cannot be robbery. The line of separation is drawn between the offence of extortion, but which is not robbery, and robbery, but between the theft which is robbery and the theft which is not robbery.—*Morgan and Macpherson* 350. The Indian Law Commissioners observe that there is no doubt whether

A large proportion of the robberies which are committed are robberies in which the robber seizes Z, threatens to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right arm bracelet may have been obtained by theft, and left arm bracelet by extortion; that the Rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime, nor is it at all necessary for the ends of justice that this should be ascertained. For though in general, the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought therefore to be made known to the Courts, yet the consent which a person gives to the taking of the property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial."

It is not necessary that the extortion should follow immediately upon the restraint in order to constitute robbery, provided that there is fear or restraint at the time. 99 Ind. Cas 596—25 L. W. 86—28 Cr. L. J. 161—A. I. R. 1927 Mad. 307.

When theft is robbery.—Theft aggravated by actual or attempted violence, as by causing fear of violence, is robbery. Whether this aggravation precedes the commission of the theft or accompanies it, or the offender has committed the kind of offence which requires violence (actual or present instant death or violence—442. And the violence or fear in whose property is stolen or to be taken away with the theft. If A is carrying

away stolen property from the place of theft and meets upon the road and hurts a Police officer or private person who suspects and desires to detain him, this does not make his offence of theft a robbery; but he commits a distinct offence *Morgan and Macpherson*, 351. Dishonest intention is the main ingredient in a robbery. 5 M. H. C. App. 39. Grievous hurt when inflicted during theft, makes it robbery. 6 W. R. Cr. 85; Theft becomes robbery, when in the course of committing it, there is an intention and an attempt to cause hurt. 6 W. R. Cr. 95. Theft is robbery under various conditions which do not involve the causing of hurt. The theft may be robbery, because in committing the theft, the offender attempts to cause hurt, or causes wrongful restraint, or fear of death, hurt or wrongful restraint 1 L. B. R. 232. To constitute the offence of robbery, it is necessary that death or hurt or wrongful restraint should be intended or caused. The property obtained by the offenders not only by property obtained

those circumstances" 38 Ind. Cas. 730

When extortion is robbery.—Extortion aggravated by causing fear of instant death, etc., is robbery. The definition requires, and the expression "instant death" etc., implies, the presence of the person who is put in fear. The explanation and the illustrations (c) and (d) mark the distinction thus made between the extortion which is robbery and the extortion which is not robbery—*Morgan and Macpherson* 352.

391. When five or more persons conjointly commit, or attempt

Dacoity. to commit a robbery, or, where the whole number of persons, conjointly committing or attempting to commit, a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

Dacoity.—This word "dacoity" (gang robbery) is used in the Bengal and Madras Regulations, and is retained in the Code for the purpose of distinguishing it from robbery. But the attempting to rob when done by a gang.—*Morgan and Macpherson*. The Code should direct the jury to consider whether the offenders had the intention of causing any gain to themselves. W. R.

1864 Cr. 8. The definition of dacoity in this section is so wide as to extend to what would have been treated as cases of plunder under the old law. 3 W. R. Cr. 60. However erroneous a claim of right may be, if in fact the conduct of the accused was solely induced by a *bona fide* belief in such claim, a charge of robbery cannot be maintained. 1 Weir 443=3 M. H. C. 264. Three known persons were charged with dacoity along with two other unknown men. The jury acquitted one of the three and convicted the other two of the offence of dacoity. *Held*, that it was quite sufficient to identify the accused, if he was exposed, identified, to N 853=53 a conviction J. J. 547, 11 stated by actual 33 Ind. Cas.

730; 18 Cr. L. J. 346, 6 C. W. N. 72; 5 C. W. 762. Where a conviction of dacoity is based on the application of a 34 or 149 I. P. Code, and there was no charge that the assembly as a whole had for its common object the committing of dacoity, the conviction is bad. 1924 M. W. N. 238=77 Ind. Cas. 441=25 Cr. L. J. 396=46 M. L. J. 311. Accused need not know or have personal grievance against their victims, before committing offence. A. I. R. 1929 Mad. 135.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Punishment—Under this section a sentence of imprisonment is quite essential and hence a mere sentence of fine is illegal. 44 A. 538=20 A. L. J. 388. In cases of robbery the legislature has provided three different degrees of punishment which may be inflicted under this section, the punishment may be extended to fourteen years' imprisonment under s. 394 to transportation for life and under s. 397 the imprisonment cannot be for less than seven years. This section is a general section and the two other sections specify the same offence under aggravated circumstances. 1 Weir 448. Where the accused committed house-breaking in the house of the complainant and abstracted from it a chamber and when the complainant attempted to catch him and recover his property, the accused in order to carry away this property, caused him hurt. *Held* that the accused committed offence under ss. 457, 392 and 394. 21 L. W. 37=88 Ind. Cas. 715=36 Cr. L. J. 859=A. I. R. 1925. Mad. 466. A person who is setting up *bona fide* assertion of claim of right in defence to a charge of robbery will have to prove that he had no dishonest intention in acting as he did. 63 Ind. Cas. 899.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class,

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Attempt to commit robbery.

under this section—*Morgan and Macpherson*, 354.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

394. If any person, in committing, or in attempting, to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing, or attempting, to commit, such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

Scope.—The offence of robbery or of attempting robbery is aggravated by hurt. The guilty act of one is imputed to all who are joined with him, provided the act is done in committing the offence of robbery. Violence or hurt entirely unconnected with that offence or used to gratify a personal spite or passion is not contemplated; as if one of the robbers should commit murder or rape, while the others are occupied with plundering or searching for property. To support this charge, there should be proof of the robbery or attempt, and of the hurt; that the hurt was caused voluntarily, that is not accidentally but intentionally or knowingly, may fairly be presumed in the absence of any circumstances to show that it was accidental.—*Morgan and Macpherson*, 355.

Jurisdiction.—A magistrate, having jurisdiction to try a prisoner for an offence under this section has not his jurisdiction taken away by the mere fact that the prisoner might also have been charged under s. 397.

Doubt.—If there is an element of doubt as to the identification of the accused in a robbery, the accused should be given the benefit of the doubt and the conviction and sentence should be quashed and set aside. U. B. R. (1892—1996) Vol. 1, 245.

An offence under this section cannot be said to be a minor offence so far as decoity is concerned. A. I. R. 1928 Mad. 207. A sentence of whipping can be passed where the robber has himself caused hurt. 1928 Rang 112.

Procedure.—Cognizable—Warrant—Not-bailable—Not compoundable—Triable by Court of Session.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Proof.—It will be borne in mind that this offence as defined does not always involve robbery. The proof should be of a robbery or attempt to rob by five or more persons who are either joint actors, or some of whom actually commit the robbery etc., while the others are abettors before or after the commission of the offence. *organ and Macpherson*, 355. An attempt if the number of persons is five. 6 Lab. 24—26 P. L. R. 33.

Recent possession of dacoited property.—The recent possession of property stolen or dacoity, even when there is no evidence identifying him as one present at the dacoity will, in the absence of any evidence to the contrary, give rise to the presumption that the accused participated in it. 1 O. C. 1. See A. W. N. 1898, 203, Rat. Un. Cr. C. 312.

Punishment.—Under this section, a sentence of transportation for life can be passed, or, by applying s. 59, a sentence of transportation from seven to ten years can also be passed, but a term of transportation, between two years and life, does not seem to be legal. 4 Cr. L. J. 385.

Section 398—Where the accused are charged and convicted of an offence punishable under this section they cannot be punished under s. 398.—Rat. Un. Cr. C. 921.

Cases.—15 A. 299, 1 Weir 446; 3 O. C. 253; 7 W. R. Cr. 35; 15 L. W. 552; 39 Ind. Cas. 296; 46 M. L. J. 311; 25 Cr. L. J. 949; 83 Ind. Cas. 705, 2 Bur. L. J. 199, 10 O. L. J. 347; 9 O. & A. L. R. 561; 1923 Lab. 385, 71 Ind. Cas. 877, 5 Lab. L. J. 82; 21 Cr. L. J. 203; 21 Cr. L. J. 515; 7 W. R. Cr. 35; 1923 Lab. 389 (2).

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Attempt to commit robbery.

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If the proof
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is robbery

or only an attempt to rob, the accused may nevertheless be convicted under this section—*Morgan and Macpherson, 354.*

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

394. If any person, in committing, or in attempting, to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing, or attempting, to commit, such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

Snope.—The offence of robbery or of attempting robbery is aggravated by hurt. The guilty act of one is imputed to all who are joined with him, provided the act is done in committing the offence of robbery. Violence or hurt entirely unconnected with that offence or used to gratify a personal spite or passion is not contemplated; as if one of the robbers should commit murder or rape, while the others are occupied with plundering or searching for property. To support this charge, there should be proof of the robbery or attempt, and of the hurt; that the hurt was caused voluntarily, that is not accidentally but intentionally or knowingly, may fairly be presumed in the absence of any circumstances to show that it was accidental.—*Morgan and Macpherson, 355.*

Jurisdiction.—A magistrate, having jurisdiction to try a prisoner for an offence under this section has not his jurisdiction taken away by the mere fact that the prisoner might also have been charged under s. 397.

Doubt.—If there is an element of doubt as to the identification of the accused in a robbery, the accused should be given the benefit of the doubt and the conviction and sentence should be quashed and set aside. U. B. R. (1892—1936) Vol. I, 245.

An offence under this section cannot be said to be a minor offence so far as dacoity is concerned. A. I. R. 1928 Mad. 207. A sentence of whipping can be passed where the robber has himself caused hurt. 1928 Rang. 112.

Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Proof.—It will be borne in mind that this offence as defined does not always involve robbery. The proof should be of a robbery or attempt to rob by five or more persons who are either joint actors, or some of whom actually commit the robbery etc., while the others are abettors, being present but not actually participating in the commission of robbery or the attempt to rob—*Morgan and Macpherson*, 355. An offence under this section can be committed if the number of persons concerned in the robbery is not less than five. 6 Lab. 24—26 P. L. R. 139—88 Ind. Cas 513—26 Cr. L. J. 1153.

Recent possession of dacoited property.—The recent possession of property stolen at dacoity, even when there is no evidence identifying him as one present at the dacoity will, in the absence of any evidence to the contrary, give rise to the presumption that the accused participated in it. I O. C. 1. See A. W. N. 1898, 203; Rat. Un. Cr. C. 312.

Punishment.—Under this section, a sentence of transportation for life can be passed, or, by applying s. 59, a sentence of transportation from seven to ten years can also be passed, but a term of transportation, between ten years and life, does not seem to be legal. 4 Cr. L. J. 385.

Section 398.—Where the accused are charged and convicted of an offence punishable under this section they cannot be punished under s. 398—Rat. Un. Cr. C. 921.

Cases.—15. A. 299, 1 Weir 446; 3 O. C. 263; 7 W. R. Cr. 35; 15 L. W. 552; 39 Ind. Cas. 296; 46 M. L. J. 311; 25 Cr. L. J. 949; 83 Ind. Cas. 705, 2 Bur. L. J. 199, 10 O. L. J. 347; 9 O. & A. L. R. 561; 1923 Lab. 385, 71 Ind. Cas. 877; 5 Lab. L. J. 82; 21 Cr. L. J. 208; 21 Cr. L. J. 515; 7 W. R. Cr. 35; 1923 Lab. 389 (2).

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session.

Procedure—Cognizable—Warrant—Not-bailable—Not compoundable—Tribunal by Court of Session.

397 If at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Scope—This section applies only to the case of a person, who, in committing robbery and dacoity, actually uses any deadly weapon, or causes grievous hurt. It is not applicable to the case of persons, who are associated with him in committing robbery or dacoity, and who do not use any deadly weapon or cause grievous hurt. 1 Weir 450—2 Weir 515. A robber cannot be convicted under this section merely because one of his associates carried a deadly weapon 20 Ind. Cas. 416, 16 C. P. L. R. 97; 22 M. L. J. 186, 23 A. 404, 1 Weir 450, 3 L. B. R. 121, 23 A. 404. **Note.** Where no robbery or dacoity has been committed an accused cannot be convicted under this section 23 A. 78—A. W. N. 1900, 302; 3 W. R. Cr. 49. This section applies to a person who himself uses a deadly weapon or causes grievous hurt and when there is no proof that the accused personally used any deadly weapon or caused any grievous hurt, he cannot be convicted under this section. 29 Cr. L. J. 520—104 Ind. Cas. 216—1 O. W. N. 459, see also 26 Cr. L. J. 1141, 17 A. 63. It is only the offender who actually uses the deadly weapon that can be convicted under s. 397. 99 Ind. Cas. 412. This section can only be used in connection with the appropriate robbery or dacoity section. 93 Ind. Cas. 131—27 Cr. L. J. 1295—5 Bar L. J. 103. The word "uses" should be construed with a wide sense so as to include not merely cutting, stabbing, etc., but also carrying the weapon for the purpose of overawing the person robbed. 205 L. R. 46—92 Ind. Cas. 750. Where several persons together commit robbery but only one of them carries and uses a revolver he alone can be convicted under this section. 97 Ind. Cas. 362—27 Cr. L. J. 1098. A conviction on a charge of dacoity merely under this section has no meaning, as the section does not contain any substantive offence but merely prescribes the minimum punishment which can be passed if robbery or dacoity is attended with certain circumstances. 49 A. 59—85 Ind. Cas. 714—26 Cr. L. J. 570. This section applies and not s. 398 where dacoity has been committed and dacoits used weapons. A. I. R. 1925 Nag. 136. This section creates no substantive offence 1928 Bom. 511. Section 34 has no application in the construction of s. 397. *Ibid.*

Uses.—The word "uses" in this section must be construed in a wide sense, so as to include not merely cutting, stabbing, shooting (as the case may be) but also carrying the weapon for the purpose of overawing the person robbed. 6 L. B. R. 41—13 Cr. L. J. 267.

Deadly weapon.—A stick is a deadly weapon. 82 Ind. Cas. 45. A *dharig*, is not a deadly weapon. 99 Ind. Cas. 49=28 Cr. L. J. 17..

Such offender.—The words "such offender" in this section mean any offender who uses a deadly weapon and no other. 3 L. B. R. 121=3 Cr. L. J. 554; 62 Ind. Cas. 665; 72 Ind. Cas. 517; 51 C. 265

Procedure.—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

Scope.—To support a conviction under this section, it is necessary to prove that at the robbery the accused was armed with a deadly weapon, and not merely that one of the robbers who was with the accused at the time carried one. Rat. Un. Cr. C. 797; Rat. Un. Cr. C. 921; 11 Ind. Cas. 1004, 23 A. 78; 6 L. B. R. 41, 1923 Lsh. 66.

Procedure.—Not cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Making preparation to commit dacoity.

Scope.—In order to commit the offence of preparation, it is not necessary that the prisoners should have done an overt act towards the commission of the dacoity. What the law contemplates is that they should have done some act to get ready for a dacoity, and the collection of men from different villages, coupled with the collection of arms, sufficiently proves it. . . . does not . . . of the g. . . and are . . . proceed . . . under t . . .

1000. The offences of commission of dacoity, preparation for it and an assemblage for the same purpose, have this in common, that they presume an intention or agreement to commit dacoity by five or more persons. A mere assembly without further preparation is not a preparation within the meaning of this section, for if it were, s. 402 would be redundant. 41 C. 350=18 C. W. N. 498. See also, 71 Ind. Cas. 360; 81 Ind. Cas. 168; 22 A. L. J. 1028. Where a number of persons assembled at the scene whereat dacoity was contemplated and one of them armed

himself with a gun in order to prevent any arrest being made; *held*, that there was sufficient material to constitute an offence under this section. 97 Ind. Cas. 745=27 Cr. L. J. 1161=8 Lah. L. J. 408. Mere assembling is not preparation, but collecting arms, etc., and proceeding to place of offence is. 1928 Lah. 193.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

what constitutes offence.—In order to sustain a conviction under this section, evidence must be adduced that the accused was a member of a gang of persons, that the gang was formed for the purpose of habitually committing dacoity, and that the accused was a member of such gang. 146, 27 G. 13. Evidence may be direct evidence, viz. that the accused met, and determined to join together for the purpose of habitually committing dacoity. In the absence of direct evidence, the associating and purpose of association may be established by proof of facts from which they may be reasonably inferred. 32 M. 179, 63 Ind. Cas. 693. For an offence under this section something more than a casual association is necessary. The section involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with a band, the common purpose of which is the habitual commission of dacoity. 63 Ind. Cas. 455.

Scope.—To support a conviction under this section it is necessary to prove (1) that a gang of dacoits existed and (2) that the accused belonged to that gang. It is not sufficient to prove that the accused repeatedly gave shelter and assistance to the dacoits. 1 Bom. L. R. 156; A. W. N. 1886, 65; 18 P. L. R. 1910 Cr. = 6 Ind. Cas. 492; 23 W. R. Cr. 18. The term "belong" implies something more than the idea of casual association, it involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with a band, the common purpose of which is habitual commission of dacoity. 7 Ind. Cas. 1012. The offence contemplated in this section is one of a very special character and entirely the creature of statute and should therefore be strictly construed. Association for the habitual pursuit of dacoity is the

of the offence. Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime, it must be established, for the purpose of conviction under the section, that the accused belong to a gang whose business is the habitual commission of dacoity. The special conspiracy must be proved. 16 C. W. N. 69, see also 65 P. L. R. 1911; 17 Ind. Cas. 1008, 1 Bom. L. R. 15, 1 C. W. N. 146, L. B. R. (1872-1893), 441. The mere fact that some women are the mistresses of dacoits does not render them liable also as dacoits. Rat. Un. Cr. C. 883. A conviction can be had under this section even when no actual commission of dacoity is proved. The element of the offence is association with the knowledge that it is formed for the purpose of committing dacoities habitually. Hence where sentence is already passed for the offence of committing dacoity there is no bar to the passing of a sentence under this section. 27 O. C. 385-89 Ind. Cas. 836-A. 1 R. 1925 Oudh 374; see also 23 A. C. J. 18-86 Ind. Cas. 282, 52 C. 595-42 C. L. J. 501; 26 Cr. L. J. 133. The essence of the section is the agreement habitually to commit dacoity not the actual commission of dacoities. Existence of such an agreement and the participation of any person in that agreement may be inferred from the circumstances. 1928 Cal. 309.

Procedure.—Cognizable—Warrant—Not bailable—Not-compoundable—Triable by Court of Session

401 Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine

Scope.—To sustain a conviction on a charge under this section, there must be (1) proof that association was for the purpose of habitual theft. The habit should be proved by an aggregate of acts. 9 P. R. 1880 Cr. It is not sufficient to prove that the accused is simply a member of a robber tribe; it should also be shown that he actually consorted with persons who were themselves associated for the purpose of habitually committing theft or robbery. 37 P. R. 1862 Cr. There must be evidence that the accused were members of a gang associated for the purpose of habitually committing theft, before there should be a conviction of an offence under this section. 4 C. W. N. 97. The section applies to persons who are members of a gang at the time of the offence.

10 Ind. Cas. 23; 36 P. W. R. 1912 Cr. 1 Weir. 452; 1 Cr. L. J. 690; 1 Weir 452. To sustain a conviction under this section it is necessary to prove (1) that there existed a gang of persons; (2) that those persons were associated for the purpose of committing theft or robbery; (3) that theft or robbery was committed habitually, (4) that the accused was a member of such a gang. 13 P. R. 1914 Cr.; 110 P. L. R. 1916; 47 C. 154; 1923 Lah. 666; 73 Ind. Cas. 815; 28 Bom. L. R. 1223. As regards value of approver's evidence to prove an offence under this section, vide, 87 Ind. Cas. 846—26 Cr. L. J. 1024. The object of this section is to punish the persons who organise thieving expeditions and form a party to commit theft. 28 Cr. L. J. 179—28 P. L. R. 19.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session Presidency Magistrate or Magistrate of the 1st class.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine

Scope.—A mere assembly without further preparation is not a preparation under s. 349. This section applies to the case of mere assembly without proof of other preparation. 18 C. W. N. 498 See also 23 A. 124. The members of an unlawful assembly were held to be guilty of an offence under this section, on their own admission that they not only knew that the assembly was an assembly for committing dacoity, but also that all the members (including themselves) composing it lived on the proceeds of dacoity, and had no other means of living. 7 W. R. Cr. 61. But an assemblage of 5 or more persons for the purpose of concerting plans for committing a dacoity yet ramots or contingent or for discussing the possibility of committing it is not within the meaning of this section, which postulates a determination to commit a dacoity. 22 Ind. Cas. 833, 32 Ind. Cas. 343. Where conviction under this section is proper 91 Ind. Cas. 269, A. I. R. 1928 Lah. 144

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

Of Criminal Misappropriation of Property.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest misappropriation of property.

Illustrations.

(a) A takes a book belonging to Z out of Z's possession, in good faith, that the property belongs to him. After discovering his mistake and that the property belongs to Z, he uses it for his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A takes the horse out of Z's possession, in good faith, that he has a right to use the horse. But, if A sells the horse for his own use, he is guilty of an offence under this section.

Explanation 1—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending (at a future time to restore it to Z). A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not commit an offence under this section, if he gives notice to the owner, or if he gives notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time, in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

- (a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.
- (b) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- (c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the owner. He was drawn. A appropriates the owner. He is guilty of an offence under this section.
- (d) A sees Z drop his purse with money in it. A picks up the purse with the intent of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.
- (e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.
- (f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to find the owner. A is guilty of an offence under this section.

In order to be dishonest the property must be mis-
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Illustrations.

(a) A takes property belonging to Z out of Z's possession, in good faith, but at the time when he takes it, that the property belongs to Z. After discovering his mistake, and for his own use, he is guilty of an offence.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

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Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

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A finds a Government promissory note belonging to Z, and takes it for his own use. A is guilty of an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not commit an offence.

Whoever finds property, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time, in such a case, is a question of fact.

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- (a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.
- (b) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- (c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.
- (d) A sees Z drop his purse with money in it. A picks up the purse with the intent of restoring it to Z, but afterwards appropriates it to his own use. A has committed no offence under this section.
- (e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.
- (f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Gist of offence—To constitute the offence under this section, there must be misappropriation of moveable property and the misappropriation must be dishonest. In order to be dishonest, the property must be misappropriated or converted "with the intention of causing wrongful gain to one person or a wrongful loss to another"; i. e. with the intention of causing gain by unlawful means of property to which the person gaining it is not entitled.

Prosecution has been innocently come by, but where by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. 15 C. 398. Where money is paid by mistake, and the person receiving it either at the time he received the money or at any time subsequently before its refund, discovers the mistake made by the complainant, but determines to appropriate the money, he is guilty of misappropriation 2 N. W. P. 475. Where a Railway claim Inspector whose duty was to investigate claims and to report what arrangements he could make with persons making claims against the railway sold certain

goods to a claimant but never credited the price to the Railway; held, that he was guilty of the offence of criminal misappropriation under s. 403 and not an offence under s. 408. 28 Cr. L. J. 161-99 Ind. Cas. 593 = 8 Lah. L. J. 515. Proof as to some of the money mentioned in the charge being misappropriated is sufficient even though exact amount is uncertain. 1928 Bom. 148. Mere retention of money is not an offence. 1928 Bom. 205.

Theft and misappropriation distinguished.—In theft the object of the offender always is to take property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender moved the property in order to a dishonest taking of it. In the offence of criminal misappropriation, there is not necessarily an invasion of the possession of another person by an attempt to take from him that which he possesses. The offender is already in possession of the property and is either lawfully in possession of it, because either he has found it or is a joint owner of it, or his possession, if not strictly lawful, is not punishable as an offence because he has acquired it under some mistaken notion of right in himself or of consent given by another (See the illustrations to section 403). The offence consists not in wrongfully obtaining possession, but in the misappropriation, either permanently or for a time, of property which is already without wrong in the possession of the offender. The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention which in theft is sufficiently manifested by a moving of the property must in the other offence be carried into action by an actual misappropriation or conversion.—*Morgan and Macpherson*, 359. In both the cases the property is movable property. Where property, lost by the owner, is found in the possession of the accused, the offence committed by the accused is not theft but criminal misappropriation as the property was not taken from the possession of the owner. 1 L. R. R. 123. An easy method of differentiating between the offence of theft, cheating with delivery of property, criminal misappropriation and criminal breach of trust is to find out whether the original taking was honest or dishonest and whether it was with the consent of the owner or without it. In theft the original taking is without honesty and without the consent of the owner, and in criminal breach of trust it is with both. In obtaining property by cheating the taking is dishonest but with the consent of the owner, and in criminal misappropriation it is honest but without the consent of the owner. A. I. R. 1929 Nag 113.

Dishonestly.—Where there is no dishonest intention an offence is not made out. Cr. Rg. 1st May 1872. In a case of criminal misappropriation, the court should consider the question, whether the money was kept with a dishonest intention, or only on a wrong opinion that the prisoner was justified in keeping it. In the latter case, the act of the accused would not constitute the offence of criminal misappropriation. Rat Un. Cr. C. 700. A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted or

which he has dominion over, is guilty of an offence under this section. Bom. L. P. 553, 1 P. L. T. 197; 10 P. R. 1903 Cr. So also the retaining of money by servants for his wages would constitute an offence 11 W. N. Cr. 51. No offence under this section is made out until it is established that there is dishonest misappropriation. A.W.N. 1881, 80. See also, 10 W. Cr. 23; 17 W.R. Cr. 11. Joint property may be the subject of criminal misappropriation. A.W.N. 1881, 89; 1 J.G. 31. In a case of criminal misappropriation, the element of dishonesty on the part of the accused has to be proved beyond doubt 1923 Cal 57. A person finding a property of which from nature of it there must be owner, must take reasonable care of it and endeavour to find out the owner. 67 Ind. Cas. 497. Where the accused acted *bonafide* in retaining property belonging to the complainant an offence under this section is committed 44 M. L. J. 128. Where the reversioner of a mortgagor sold some of the bricks of the mortgaged property, that had tumbled down and appropriated the price, *held* that accused could not be convicted either under this section or under s. 416, in the absence of a finding of dishonest misappropriation or of substantial deterioration of the property 6 C. W. N. 31. The managing member of a joint Hindu family may be liable to a charge of misappropriation, if after a division of the property has taken place, and the share of each member of the family has been ascertained, it is found that the manager has wrongfully applied to his own use the share that belongs to one of the other co-partners 1 Weir 453. The accused found two logs of wood drifting in a river and took possession of them. They were left in front of his house for nine months. *Held* that he committed no offence under this section 1 Weir 455. The mere picking up of money, and retaining it, or making it over to another, could not necessarily constitute the offence 5 C. P. L. R. 47 Cr. See also. 28 P. L. R. 1905, 11 P. R. 1908 Cr.

Misappropriates and converts—The essential ingredient for an offence under this section is proof of dishonest misappropriation of the property or conversion to one's own use. 47 Ind. Cas. 687, 40 A 119. It is not criminal misappropriation for one of several co-owners to take property belonging to them all unless it is also found that he appropriated it to his sole use. 25 Cr. L. J. 669 (1). Any use of temple property by the priest otherwise than for the idol or temple amounts to misappropriation. Rat. Un. Cr. C. 919. In a case of criminal misappropriation, the Court should consider the question, whether the money was kept with a dishonest intention, or only on a wrong opinion that the prisoner was justified in keeping it. In the latter case, the act of the accused would not constitute the offence of criminal misappropriation. Rat. Un. Cr. C. 700, 3 Bom. L. R. 94. Where agent or servant applies the money collected on behalf of his master to his own use he commits an offence under this section 3 N. W. P. 30. A person who is proved to have dishonestly misappropriated cannot be convicted of retaining it s. 411. 3 L. B. R. 254. Appropriation of money paid by mistake is

offence under this section. 2 N. W. P. 425; A and B met at Benares station. A got a ticket for Ajudhia and B for Benares Cantonment. A showed her ticket to B to see if it was all right. A instead of returning the same ticket, substituted his own. *Held* that the offence was one of misappropriation under this section. A. W. N 1905, 9. A person who found coin from land bought by him cannot be convicted under this section. Rat Un Cr. C 8. This section, is in no way restricting to appropriating property to one's own use. If a trustee repudiates the trust and asserts that he is holding on behalf of a person other than the one who entrusted it to him, he is as much guilty of misappropriation as if he had put up his own claim. 92 Ind Crs 545-48 A. 258-27 Cr. L. J. 297.

Moveable property.—A bull set at large by a Hindu at the time of performing funeral ceremonies in accordance with Hindu religious usage is not property "capable of being misappropriated" 8 A. 51. A bull dedicated to an idol and allowed to roam at large is not *fero bestia* and therefore *res nullius* 11 M. 145. The offence consists in the dishonest misappropriation or conversion of moveable property, and before a conviction can be recorded, it must be proved that the article forming the object of the charge was moveable property. 18 B. 212. Standing crops are immoveable property. When a judgment-debtor cuts the crops under attachment and removes them he commits an offence under this section. 22 M. 151.

Explanation I.—The offence under this section consists in the dishonest misappropriation or conversion either permanently or for a time, of property which is capable of being misappropriated. 12 M. 49. When a person, got possession of a necklace, and afterwards sold it to the police, although representation that it belonged to an officer was made, and the officer, sister, which was found to be untrue to the knowledge of the accused, *Held* that he was guilty under this section. 24 R 1896 Cr.

Charge—In a case in which the accused is charged under this section, the charge should specify the person to whom the property belonged. 14 W. R. Cr. 13. Several cases of misappropriation constitute separate offences. 15 W. R. Cr. 5.

Proof.—The fact of misappropriation can be proved by direct as well as by circumstantial evidence. 31 Q. L. J. 203. When a police constable of seventeen years' standing caught a stray sheep intended for sacrifice and on his transfer from the thana to which he was attached to another thana took it with him there, *Held* that it was sufficient evidence of dishonesty and that he was guilty of an offence under this section. 17 A. L. J. 145.

Completion of the offence.—Under this section the offence is complete the moment the accused receives or retains the money with a

dishonest motive of appropriating it or converting it into his own use.
921 Pat. 31—56 Ind. Cas. 775

Cases.—It is a possible view that an accused is guilty of criminal breach of trust between the misappropriation and the repayment, but courts should be slow when re-payment is at once made on demand to assume guilt in accused person. Criminal liability is not the same as civil liability. 97 Ind. Cas 1041—27 Cr. L. J. 1217. It cannot be laid down as an absolute rule applicable to all cases that if a man cannot move a thing away, he cannot dishonestly convert it to his own use. 92 Ind Cas. 747—27 Cr. L. J. 331—50 M. L. J. 94. Where a Sub-inspector of Police who came across a strong bullock advertised for the owner but as no one turned up had it sold after 20 days, he is not guilty of any offence under this section, 91 Ind. Cas. 37—23 A. L. J. 128. Where it is proved that a certain sum of money for which a Hindu father was accountable was not accounted for him and in a scheme sent he was ordered to pay the amount it will not amount to misappropriation 1926 M. W. N. 194—23 L. W. 714—94 Ind. Cas. 634—50 M. L. J. 353. Where a Post master opens a V. P. article addressed to himself and extracts a railway receipt from it without paying for it for six days and makes a false entry in P. O. books, he is guilty of criminal misappropriation. A. I. R. 1928 Lab. 92.

Procedure—Not Cognizable-Warrant-Bailable-Compoundable with permission of the Court—Triable by any Magistrate.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender, at the time of such person's decease, was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z died	His servant A. before
the money	person entitled to such
possessed	as committed the offence
defined in this section	

Scope.—This section is intended only to punish servants and strangers who could possibly have no right to or interest in, the effects of a dead man, and who misappropriated such effects, but not to punish near-relations who take possession of and deal with the effects under a

of independent ownership or as heir to the deceased 25 Ind. Cas. 514. It is not necessary for a conviction under this section that the accused should misappropriate it to his own use. 12 W. R. Cr. 39; 11 W. R. Cr. 1. Under this section all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive. 12 W. R. Cr. 39. This section does not apply to immoveable property 6 B. H. C. Cr. 33. This section relates to a description of property peculiarly needing protection. The offence consists in pilaging of moveable property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it. The proof should be that the property belonged to or was in the possession of the deceased person at the time of his death, and that it has since been misappropriated or converted to his own use by a person who knew or had reason to know that it belonged to the deceased—*Morgan and Marpherson*. This section is expressly limited to moveable property alone and criminal misappropriation or conversion is easily possible of the moveable property where the material have been secured from the building are removed. L. R. 6 All. 200 Cr.—A 1 R. 1925 All 673.

Procedure.—Not-cognizable—Warrant Builable—Not-compoundable
 Triable by court of Session, Presidency Magistrate or Magistrate of the first or second class

Of Criminal Breach of Trust

Distinguishing feature of the offence.—This offence like the offence of criminal misappropriation is characterized by an actual fraudulent appropriation of property. There is not originally a wrongful taking or moving as in theft, but the offence consists in a wrongful appropriation of property, consequent upon a possession which is lawful. The offence is distinguishable from criminal misappropriation because the subject of it is not property, which by some casual or other wise, but without criminal means, comes into the offender's possession but the property, which is entrusted to the offender by the owner or by other's lawful authority and which the offender holds subject to some duty or obligation to apply it according to the trust—*Morgan and Marpherson*.

405 Whoever, being in any manner entrusted with property, or with any dominion over property
 Criminal breach of trust, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits
 "criminal breach of trust."

Illustrations.

(a) A, being executor to the will of a deceased person dishonestly disobeys the law which directs him to divide the effects according to the will and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse keeper. Z going on a journey, entrusts his furniture to A under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly, but in good faith holds shares in the shares in the here though a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Scope.—The offence, as here defined, appears to include any dishonest misappropriation by persons in whom confidence is placed as to the custody or application of particular property whether it be by legal authority or private contract or consent. Persons as clerks, agents, servants or otherwise, under whatsoever name, have a confidence reposed in them by their employers and are, whether in the ordinary or specially entrusted with property, tend beyond the particular to be within this section if they commit a breach of trust by them dishonestly for themselves or wrongful loss

to such persons. Sections 407-409 make special provisions for various cases in which property is entrusted to agents or contractors who commit this offence.

This definition includes those who are entrusted in any manner with property, as warehouse-keepers, etc., who are entrusted only with the possession or custody of property. Persons who are empowered to take or deliver possession of property whether such power is derived from the owner or from any other person, and persons who are entrusted with any dominion over property are also included. Property which is bulky or which cannot, for other reasons, be delivered from hand to hand, is usually represented by some writing or other thing. Thus the key of the warehouse or place where goods are lodged, the bill of lading, delivery order, or other document however called, which is used in the ordinary course of business to show the possession or control of property and

wrongful loss to constitute a criminal breach of trust.—*Morgan and Macpherson*.

Property.—The property referred to in this section must, as in s. 403, be moveable property and criminal breach of trust cannot be committed in respect of immoveable property 23 C. 272.

Entrusted—Moneys due to a customer from a banker are simply due to a customer as debts and are fully at the disposal of the banker.

making an ornament, introduced copper. *held* that an offence under this section has been committed 4 B. H. C. Cr. 16. In a case under this section trust is essential. 75 Ind. Cas. 89, 72 Ind. Cas. 172; 1923 Lah. 321; 25 C. W. N. 838; 1928 Sind. 106.

Dishonestly.—The word "dishonestly" means the doing of an act with the intention of causing wrongful loss or wrongful gain; and wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. For either in wrongful loss or gain, the property must be lost to the owner or the owner must be wrongfully kept out of it. 1 Weir 460—3 M. H. C. App 6. Great caution ought to be used in drawing the inference of dishonesty from a breach of duty.

imposed by civil law. 1 Weir 461=6 M. H. C. App. 28. In an offence under this section the dishonest intent is an essential ingredient. 30 P. R. 1879 Cr. Mere retention of money is not an offence under this section. 2 C. P. L. R. 161; 1 Weir 462; 17 M. L. J. 413, 16 Cr. L. J. 543. In a case of criminal breach of trust the overt act of the accused showing his dishonesty is essentially necessary to be proved to establish the offence and till the time arrives when the act is done it cannot be said with certainty that the offence was committed. *Lanter v The King*, 1913 A. C. 221; see also 41 C. L. J. 80=29 C. W. N. 492=86 Ind. Cas. 213=26 Cr. L. J. 725=A. I. R. 1925 Cal 613. A public servant who being entrusted with Government funds for the purpose of constructing a building obtains the materials free of cost, from some body and appropriates a certain amount to himself as their price, is guilty of criminal breach of trust. 4 Pat. 488=6 P. L. T. 154=86 Ind. Cas. 459=26 Cr. L. J. 811. In order to establish a charge of dishonest misappropriation or criminal breach of trust it is not necessary that the accused should have actually taken tangible property such as cash from the possession of another and transferred it to his own possession. A. I. R. 1926 Lah. 385. Where an agreement is a wager and void under the contract law, a person cannot be convicted under the 2nd part of this section for dishonest use and disposal of entrusted property in violation of express or implied contract if based on such agreement. 100 Ind. Cas. 989=28 Cr. L. J. 381=A. I. R. 1927 Mad 425. But in such a case he may be convicted under 1st part of this section. *Ibid*. The trust contemplated by the section and not in the good faith of a full object. A. I. R. 1927 obtaining deduction, the accused was entrusted with the money received. 1928 Bom. 521.

Dishonest misappropriation might sometimes be inferred from the circumstances without direct evidence. 2 Cr. L. J. 478. A matter which is *ex-facie* a civil dispute should not be entertained by the criminal court unless the prosecution is able to prove clearly and beyond doubt that the accused acted dishonestly and that the property was

legal recovery of which is time-barred. 6 N. L. J. 119.

Disposal of property in violation of any direction of law. 200. - A person, who pledges what is pledged to him, may be guilty of criminal breach of trust. There are two elements to constitute the offence, (1) the disposal in violation of any direction of law or contract, express or implied, describing the mode in which the trust ought to be discharged, (2) and such disposal must be made dishonestly. Great caution ought to be used in drawing the inference of dishonesty from breach of duty imposed by civil law. 1 Weir 461=6 M. H. C. App.

r Weir 464; U.B. R. (1897—1901) Vol. I, 345; 17 Bom. L. R. 670.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for criminal breach of trust.

Agreement—An agreement allowing a person, who had committed criminal breach of trust, to refund the property misappropriated cannot operate to bar a subsequent prosecution for the offence of criminal breach of trust. r Weir 462.

Partnership—In a partnership, it is open to a partner to spend the money he receives and account for it in dealing with the partnership, and such a partner is plainly entitled to be called upon for an account of the expenditure of the money which he has received. In a case where it was not satisfactorily made out that this was not done, and it would not be made out in the absence of a proper demand for an account, it was held that no dishonest conversion could be found, which would justify the conviction of a partner under this section. 35 C. 1108.

Burden of proof.—Where in a charge of criminal breach of trust, the accused pleads payment to the proper person, the burden of proving non-payment is on the prosecution and not on the accused. Rat. Un. Cr. C. 872. The prosecution must prove that trust has been created in respect of the property. 85 Ind Cas. 839.

Evidence.—The evidence in support of a charge of criminal breach of trust must show (1) that the accused person was, in some manner, entrusted with the property, and (2) that the accused person committed the offence. The offence consists in the offender's misappropriation of the property, or in the offender's not subject of this offence. There can be no criminal misappropriation unless some trust or confidence exists.

(2) It must be proved that the accused has dishonestly misappropriated or disposed of the property in violation of his duty. As to the money has been either the offender has denied or wilfully. A person who keeps the accounts, or otherwise duly acknowledges the receipt of money.

excuse or advances a claim wholly ungrounded. But the absconding of the accused, coupled with a refusal to account or a false account, furnishes strong evidence of a criminal misappropriation of the money. If the evidence in support of the charge leaves it doubtful whether the offence which has been committed is theft or criminal breach of trust, the Court may nevertheless proceed to judgment and award punishment (see section 72)—*Morgan and Macpherson*.

Where money was paid to a person for a particular purpose and in the case of the purpose failing, it was appropriated towards a debt due to him, there is no offence of criminal breach of trust. 92 Ind. Cas. 895 = 27 Cr. L. J. 383. Where money is advanced in respect of a contract, and there is no entrustment in a fiduciary form, any dispute arising out of the breach of contract is one of civil nature and capable of settlement not in the criminal but in the civil courts. 96 Ind. Cas. 501 = 27 Cr. L. J. 949.

Cases.—11 P. L. R. 1910, L. B. R. (1872—1892), 130, Rat. Un. Cr. C. 557, 12 A. L. J. 730, 17 Bom. L. R. 670, 17 C. W. N. 479; 15 C. L. J. 512, 1 Bom. L. R. 22, 35 A. 361, 16 P. W. R. 1907 Cr.; 2 C. L. R. 515, 58 Ind. Cas. 824, 56 Ind. Cas. 669, 52 Ind. Cas. 480; 49 Ind. Cas. 343, 51 C. 796; 40 Ind. Cas. 728, 16 A. L. J. 600, 22 C. W. N. 1005; 33 C. L. J. 252, 9 O. L. J. 421, 65 Ind. Cas. 1004.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

407. Whoever, being entrusted with property as a carrier, whatfinger, or warehouse keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.—Those who receive property under a contract express or implied to carry it or keep it in safe custody are by this section made punishable for a criminal breach of duty with respect to such property. Carriers by water who run their boats or vessels ashore, intending to misappropriate the cargo, are punishable under s. 439—*Morgan and Macpherson*, 368. Where property is entrusted to a person as a carrier, it is necessary to show at least, in order to convict him of criminal breach of trust, that some of the property could not be accounted for by him. 9 Bom. L. R. 229.

Notes.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

408. Whoever, being a clerk or servant, or employed as a

Criminal breach of trust
by a clerk or servant.

clerk or servant, and being in any manner
entrusted in such capacity with property,
or with any dominion over such property,

commits criminal breach of trust in respect of that property, shall
be punished with imprisonment of either description for a term
which may extend to seven years, and shall also be liable to fine.

Scope.—A clerk or servant who takes his master's property is
punishable for theft. (See section 381) The present provision seems to
apply to cases in which there is some special trust, as where the clerk or
servant is entrusted with his master's property that he may sell or dispose
of it.

can be raised against servant failing to properly account for property
entrusted to him. 26 Cr. L. J. 267-8; Ind. Cas. 331. But definite
finding of definite sum traced to the accused is necessary. 85 Ind. Cas.
372-26 Cr. L. J. 532-A I R 1925 Cal 260. An offence under this
section is committed, even where the act of the accused was to cause
wrongful loss to the complainant for a time only. 8 Bom. L. R. 951-5
Cr. L. J. 5; Vide, 22 M. L. J. 112, 24 C. 193, 9 Cr. L. J. 257; 7 A. L. J.
319; 31 C. 928; 24 Ind. Cas. 161; 9 P. L. R. 1902; 14 Bom.
L. R. 306; 7 A. L. J. 225; 16 C. W. N. 1155; 40 C. 318; 16 Bom. L. R.
80; 42 A. 522; 51 Ind. Cas. 673, 2 Rang. 476; 29 C. W. N. 54; 40 Ind.
Cas. 303; 40 A. 565; 65 Ind. Cas. 1000; 96 Ind. Cas. 388; 1928 Bom.
557; 1928 Lah. 926.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compound-
able—Triable by Court of Session, Presidency Magistrate or Magistrate
of the first or second class.

409. Whoever, being in any manner entrusted with property,

Criminal breach of trust
by public servant or by
banker, merchant, or
agent.

or with any dominion over property, in his
capacity of a public servant, or in the way
of his business as a banker, merchant, factor,
broker, attorney, or agent, commits criminal

breach of trust, shall be punished with
imprisonment of either description
for a term which may extend to seven years,
and shall also be liable to fine.

Scope.—The criminal breach of trust which is here punishable is committed by a person who has obtained possession of property in trust for or over, or entrusted to him in such manner that he becomes subject, by contract, express or implied, or by force of law, to a certain duty in regard to it. A factor or agent who sells the goods of his employer and receives the money on his behalf, if he commits a criminal breach of trust by dishonestly misappropriating his principal's money, will be punishable under this section. But the relation between a banker and his customer is not necessarily of the same fiduciary kind. The money which the customer places in his banker's custody becomes the banker's money; he may employ it as he pleases and he commits no breach of trust even if he puts it in jeopardy, only he is of course answerable for the repayment of the amount which he has received. It seems that a banker would be criminally liable under the present section only in case he undertook some particular duty (in the way of his business) in relation to the property entrusted to him, as if he received Government Deposits or other securities into his custody. *Morgan v. Ash*, 10 Q. B. 413, 1868, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 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2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 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2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 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3860, 3861, 3862, 3863, 3864, 386

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over such property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Soope.—A clerk or servant who takes his master's property is punishable for theft. (See section 381) The present provision seems to be made for cases where there is some special trust, as where the clerk or servant is entrusted with property, and he may sell or dispose of it, or he may be required to pay it over to his master, or to some other person, or to make it good to some person of the party. The offence is made punishable in the same manner as the taking of master's property by a servant when the servant is entrusted with it.

finding of definite sum traced to the accused is necessary. 85 Ind. Cas. 372; 26 Cr. L. J. 532; A. I. R. 1925 Cal 260. An offence under this section is committed, even where the act of the accused was to cause wrongful loss to the complainant for a time only. 8 Bom. L. R. 951; 5 Cr. L. J. 5; Vide, 22 M. L. J. 112; 24 C. 193, 9 Cr. L. J. 257; 7 A. L. J. 319; 31 C. 928, 24 Ind. Cas. 161; 9 P. L. R. 1902; 14 Bom. L. R. 306; 7 A. L. J. 225; 16 C. W. N. 1155; 40 C. 318; 16 Bom. L. R. 80; 42 A. 522; 51 Ind. Cas. 673; 2 Rang. 476; 29 C. W. N. 54; 40 Ind. Cas. 303; 40 A. 565; 65 Ind. Cas. 1000; 96 Ind. Cas. 388; 1928 Bom. 557; 1928 Lah. 926.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.—The criminal breach of trust which is here committed

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express or implied, or by force of law, to a certain duty in regard to
A factor or agent who sells the goods of his employer and receives the
money on his behalf, if he commits a criminal breach of trust
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in jeopardy, only he is of course answerable for the repayment of the
amount which he has received. It seems that a banker would be criminal
nally liable under the present section only in case he undertook some
particular duty (in the way of his business) in relation to the property
entrusted to him, as if he received Government Paper or other securities
into his hands and he commits no offence even if he puts a
conviction under the offence must be
the property has been

substituted for a valuable one, it must be positively shown that there was
some valuable property in the package when it came under the control
of the accused 41 C L J 87-86 Ind. Cas. 38-26 Cr. L J 66a-29 C.
W. N 260-A I R 1925 Cal. 501. To make out an offence under this
section a criminal intention is necessary and this a matter of inference
from the facts proved. But it cannot be sustained in respects to the acts
from an agent 87 Ind. Cas 962-26 Cr L J 1042-A; I. R. 1925 Oudh.
676. If the property under the control of the public servant disappears
and his connection with the conspiracy is proved, conviction will follow,
even when there is not the slightest evidence of any money having been
received by him 28 O C. 230-88 Ind Cas 830-26 Cr. L J. 1217.
When a post master received a V P letter and handed over the same to the
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he is said to have
account
this section
127 Cal. 400.

General defalcation.—A person accused under this

be legally convicted of the offence defined in that section in respect of a general deficiency in the accounts. 18 A. 116; 17 A. 153

Dishonest.—When a person misappropriates to his own use property which he is not entitled to dispose of, either wholly or partially, or for future time, and the misappropriation is dishonest even at the time of the misappropriation, it is a dishonest misappropriation. L. B. R. (1872-73) 10 M. W. N. 536; to prove the actual mode of

Public servant.—A naib nazir is a public servant. 2 N. W. P. 298. A police servant is a public servant. U. B. R. (1892-1896) Vol. I, 253.

Cases.—8 Ind. Cas. 325; 9 M. L. T. 332, 162 P. L. R. 1915, 14 Ind. Cas. 653; 55 P. L. R. 1902, 3 B. H. C. Cr. 51, 6 Bom. L. R. 517; 12 A. L. J. 1022; 12 Cr. L. J. 66; 1 U. B. R. 1903, Penal Code, 9; 6 Bom. L. R. 94; 167 P. L. R. 1915; 164 P. L. R. 1915; 9 Cr. L. J. 92; 18 C. W. N. 1152; 2 M. W. N. 536; 5 Cr. L. J. 341, Rat. Un. Cr. C. 632; 16 Cr. L. J. 654; 16 Cr. L. J. 473, 16 Cr. L. J. 443, 16 Cr. L. J. 443; 42 A. 204; 21 A. L. J. 149; 1923 Rang 68 (1); 1923 Lah. 566; 28 C. W. N. 831; 28 C. W. N. 850; 1. Bur. L. J. 45; 47 Ind. Cas. 64, 7 Pat. L. T. 804, 95 Ind. Cas. 943, 29 O. C. 245; 94 Ind. Cas. 130; A. I. R. 1926 Lah. 385, A. I. R. 1928 Oudh 277; 1928 B. 208; 1928 C. 321; 1928 Cal. 382.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Of the Receiving of Stolen Property.

410. Property the possession whereof has been transferred

by theft, or by extortion, or by robbery,
and property which has been criminally
misappropriated, or in respect of which criminal breach of trust has
been committed, is designated as stolen property, "whether the
transfer has been made, or the misappropriation or breach, of trust
has been committed, within or without British India" But, if such
property subsequently comes into the possession of a person legally
entitled to the possession thereof, it then ceases to be stolen
property.

Legislative changes.—Here the words "the offence of" have been omitted by Act XII of 1891 and Act VIII of 1882. The words quoted have been inserted by the Indian Penal Code Amendment Act (VIII of 1882) s. 9

Principle.—The receiver of stolen property though not strictly a participator in the offence by which the property has been acquired, facilitates the commission of that offence or at least renders its detection

more difficult, by aiding the thief in the disposal of the property. But the Code does not treat the receiver as an accessory or abettor, or as an offender against the law.

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Stolen property—An extended signification is given to the word "stolen property" only things which have been obtained by a breach of trust: *Morgan and Macpherson*, 371. property, unless the act by which it has been acquired has been committed either in British India or elsewhere by a person who is liable to be tried in British India for offence committed elsewhere. s B. 338. (F. B.).

But if such property etc.—The rules of the civil law applicable to the transfer and acquisition of property are not applicable to the property stolen from a person.

Such property—A person who has stolen property, however guilty, is not a receiver of such property—*Morgan and Macpherson*, 371. See also 11 P. L. R. 1905; 113 P. L. R. 1914.

Identification—A person who has stolen property, however guilty, is not a receiver of such property unless it is proved that he knew the property was stolen. *M. L. R.* and previous general principles existed and known.

Theft—If stolen property is found soon after the theft in the possession of a person who cannot give a reasonable account of the way by which he became possessed of it, it is fair to presume that he himself is the thief. If the evidence leaves it doubtful whether the accused is guilty of theft or of receiving stolen property, he may be adjudged guilty and punished under s 72. *Morgan and Macpherson*, 373; 1 L. B. R. The presumption arising from the possession of stolen property is which is strengthened, weakened or rebutted by concomitant circumstances, such as the length of time elapsing, vicinity to the spot.

of the property and the behaviour of the accused *Morgan and Macpherson*, 373 : 23 W. R. Cr. 16.

411. Whoever dishonestly receives or retains any stolen property knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both

Receives.—There must be a taking into his possession of the "stolen property" by the receiver, but a manual possession or a touching of the property is not essential to constitute a receipt of it. If the stolen property

ing or having reason to believe at the time that the property was stolen property 9 C. W. N. 1027.

between the theft and the discovery of the stolen article, possession by itself does not require any explanation. 1912 M. W. N. 529

Knowing or having reason to—The receiver should know or is not the living such dishonest of profit or conceal them, or wrongful 12 : 1913 M.

onus to prove innocent possession is not on the accused. 1928 Lah 687.

Proof.—To support a charge of receiving stolen property, the prosecution must prove, 1st, that the property is "stolen property," that is, that it comes within the definition of s. 410, having been obtained by some one of the offences there mentioned, 2nd, the receiving or retaining of the property by the accused person, 3rd the guilty knowledge of the accused. His dishonest purpose may be inferred if the above matters, are satisfactorily proved and left unexplained. As to the proof of the receiver's guilty knowledge, from the caution necessary in this sort of traffic, it must often happen that no express disclosure is made to him, and yet he knows the property to have been stolen as well as if he had actually witnessed the theft. In this, as in other cases, it is sufficient "if circumstances are proved which, to persons of ordinary understanding in the situation of the accused person, must have led to the conclusion that the property was stolen or otherwise dishonestly acquired. Thus, if ornaments, bundles of clothes of various kinds or moveables of any sort from persons destitute of property and without any lawful means of acquiring it, and especially if it is proved that the property was brought at untimely hours and under circumstances which lead to the conclusion that it was stolen, it may be concluded that it was so obtained." *See also* *per* *dicta* *concluded that it was so obtained by which it has*

out of its acquisition Another circumstance from which such guilty knowledge may be inferred is that the property has been received from a notorious thief or one from whom stolen property has, on previous occasions, been received—*Morgan and Macpherson*, 373, A. W. N. 1883, 17. Before a conviction, can be had under this section the possibility of the accused having obtained the goods of which he is found in possession by a legitimate means must be excluded 62 Ind Cas 867.

Cases.—4 C. 990; 315 P. L. R. 1913, 32 P. L. R. 1905, 9 A. L. J. 370; 10 C. W. N. 219, A. W. N. 1895, 229, 6 C. W. N. 550, 51 P. R. 1905 Cr., 9 P. W. R. 1907 Cr., 29 A. 598, Rat. Un. Cr. C. 776; 5 C. 167, 15 P. R. 1889 Cr.; 2 N. W. P. 187, 15 Ind. Cas. 971; 2 N. W. P. 312; 4 P. W. R. 1907 Cr.; 46 P. L. R. 1912, Rat. Un. Cr. C. 42; 161 P. L. R. 1913, A. W. N. 1883, 179; 17 C. W. N. 1129; U. B. R. (1897-1901), Vol. I, 171, A. W. N. 1883, 158, 20 Ind. Cas. 126; Rat. Un. Cr. C. 449, 6 Bom. L. R. 361, 15 Ind. Cas. 492; 15 B. 369, A. W. N. 1884, 85, 4 Ind. Cas. 481, 8 C. 634, 9 P. W. R. 1907 Cr.; 4 P. L. R. 1905, 36 P. L. R. 1910, 18 C. W. N. 1178, 6 A. 224; 17 A. 526, 15 A. 317, 9 A. 348, 2 A. 276; 1 N. W. P. 298, 5 N. W. P. 120; A. W. N. 1898, 70, A. W. N. 1881, 94, A. W. N. 1885, 27; A. W. N. 1881, 83, A. W. N. 1887, 281, 2 Bom. L. R. 343; 6 B. 630; 6 B. 731; 8 B. 575; 29 B. 449, 5 Bom. L. R. 877; Rat. Un. Cr. C. 389; Rat. Un. Cr. C. 594, 11 C. 100, 15 C. 511; 21 C. 328; 6 M. 373; 3 M. L. T. 30; 4 M. L. T. 415; 1 Weir. 471; 92 P. L. R. 1902;

25 P. R. 1883; 8 Cr. L. J. 184; 15 P. R. 1889 Cr.; 39 P. R. 1881 Cr.; 18 P. R. 1904 Cr.; 46 P. R. 1887; 37 P. R. 1888 Cr.; 19 W. R. Cr. 3; W. R. 1864 Cr. 5; 6 W. R. Cr. 87; 13 W. R. Cr. 26; 19 W. R. Cr. 37; 19 W. R. Cr. 38 N.; 24 W. R. Cr. 33; 13 W. R. Cr. 30; 25 W. R. Cr. 10; Rat. Un. Cr. C. 98; Rat. Un. Cr. C. 416; 6 Ind. Cas. 308; 4 Lah. L. J. 484; 20 A. L. J. 162; 1922 Lah. 80; 63 Ind. Cas. 620; 24 O. C. 29 Cr., 22 C. W. N. 597; 1 P. R. 1917 Cr., 3 Pat. 503; 1923 Lah. 460; 1 Pat. L. R. 177 Cr., 50 C. 564; 44 M. L. J. 243; 5 Lah. L. J. 87; 1923 Pat. 297 (2); 73 Ind. Cas. 527, 19 N. L. R. 176; 21 A. L. J. 836; 74 Ind. Cas. 271; 1923 Lah. 36 (1); 9 O. L. & L. R. 779; 56 Ind. Cas. 856; 54 Ind. Cas. 248; 58 Ind. Cas. 341; 1 Pat. L. T. 727; 17 Cr. L. J. 179; 17 Cr. L. 25; 17 Cr. L. J. 312; 26 P. L. R. 165; A. L. R. 1925 Pat. 20; 47 A. 511, 6 Pat. L. T. 294; 26 Cr. L. J. 1, 47 Ind. Cas. 694; 96 Ind. Cas. 120, 27 Cr. L. J. 1013; 27 Cr. L. J. 657, 27 Cr. L. J. 717; 27 Cr. L. J. 32, 44 Cr. L. J. 205; 1928 Lah. 637.

Proceduro—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows

Disbonestly receiving property stolen in the commission of a dacoity. or has reason to believe to have been transferred by the commission of dacoity

or dishonestly receives from a person whom he knows or has reason to believe to belong or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Scope.—For one description of cases of receiving stolen property, namely, the cases in which property is known by the receiver to have been acquired by the offence of dacoity or is received from a dacoit, it was thought fit especially to provide a heavier punishment. The receiver, in these cases, may be punished as follows:

22 A. 445. But the fact of stolen property being found concealed in a man's house would ordinarily be sufficient to raise a presumption that he knew the property to be stolen property, but not to prove that he knew that it had been acquired by dacoity. Rat. Un. Cr. C. 184. See 7 W. R. Cr. 199, 9 W. R. Cr. 16.

Cases—Rat. Un. Cr. C. 756, U. B. R. (1897-1901) Vol. I, 72; 5 W. R. Cr. 16; 7 B. 731; 13 W. R. 42; 5 B. 63; 17 W. R. 50; 9 A. 523;

12 O. L. J. 339; 42 Cr. L. J. 212. A receiver of the articles of petty value stolen at a dacoity should not be treated in practically the same manner as though he were accused of the actual dacoity. 103 Ind. Cas. 62.

Procedure—Cognizable—Warrant—Not-bailable—Not compoundable—Triable by Court of Session.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—The common receiver or professional dealer in stolen property, is hereby made punishable—*Morgan and Macpherson*, 374. The essence of the offence under this section is the habitual, that is to say, constant receipt or dealing in goods which the prisoner knew or had reason to believe, were stolen. A man cannot be said to be habitually receiving stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day; but in addition to the receipt from different persons there must be a receipt on different occasions and on different days. 19 C. 190, 13 P. R. 1914 Cr.

As regards procedure vide 8 C 634—10 C. L. R. 466.

Cases.—26 Cr L J. 1077—26 P L R. 470

Procedure—Cognizable—Warrant—Not-bailable—Not compoundable—Triable by Court of Session.

414. Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Scope.—Those whose dealing with stolen property is not of such a kind as to constitute the offence of receiving or retaining it, may be punished by aiding the concealment, of the stolen property, if it is known or has reason to believe that the property is stolen, constitutes the offence—*Morgan and Macpherson*, 375, 29 B 449—7 Bom L.R. 527. Raj U'n Cr C. 553. 1 Weir. 469; 39 P R. 1881 Cr. 1 Agra Cr. 9, U B. R (1910) 1st Cr. 8; A. W. N 1887. 96. 14 Bom L. R. 893. 23 A. 313. 15 P R. 1896 Cr. 1 A. 379. 45 M L. J 728

This section is not applicable to original thief. 4 N. L. R. 71

Believe—The word "believe" is a very much stronger word than suspect, and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property which he was dealing in must be stolen property. 6 B. 402.

Cases.—L. B. R. (1872-1892), 324, 13 Cr. L. J. 59, 6 Bom. L. 1 R. 725; 2 B. H. C. 130; 17 C. W. N. 1129, 6 Bom. L. R. 361; U. B. R. (1897-1900), Vol. I. 71; Rat. Un. Cr. C. 449, 1 A. 379.

Procedure—Cognizable-Warrant-Not-Bailable-Not-Compoundable-Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd class.

Of Cheating.

Scope of the offence of cheating—"The provisions for the proper punishment of some of the aggravated forms of cheating are contained in other chapters of the code than the present one (of offence against property) wherein cheating is defined, viz in the chapters of offences relating to the coin, to weights and measures, to documents and to trade or property marks. The practice of intentional deceit for purposes of gain or to induce a person to act in such a way as to cause damage or harm to himself is an offence made punishable by the Code under this head. It is important that the law should in no case encourage deceit or falsehood, and that it should impose restraints on those who practice deception. But the legislator cannot go so far as to establish the rule of morality as a part of the rule of law. Many false pretences and many representations calculated and intended to mislead are morally wrong and deserving of punishment, but a Penal Code cannot adopt so severe a standard as the moral law whereby to measure the conduct of men. It is by public opinion, the opinion of the great body of the people, that restraints and punishments must in such cases be imposed. It would be highly inexpedient to punish as a criminal every dependent who obtains pecuniary favours by false profession of attachment to a patron, every legacy-holder who obtains a bequest by cajoling a rich testator, every debtor who moves the compassion of his creditors by over charged pictures of his misery, every petitioner who, in his appeals to the charitable represents his distresses as wholly unmerited, when he knows that he has brought them on himself by intemperance and profusion.

"In dealings between buyers and sellers, frequently even in tolerably . . . these happenings are exaggerated on the one side and . . . e . . . t . . . t . . . s

of life is conducted all over the world, and no where more than in India, by means of conflict of skill, in the course of which, deception to a certain extent perpetually takes places. The moralist may regret this but the legislator sees that the result of the attempt of the buyer and seller to gain an unfair advantage over each other is that in the vast majority of cases, articles are sold for the prices which it is desirable that they should fetch ; and therefore he does not think it necessary to interfere. It is enough for him to know that all this great mass of falsehood practically produces the same effect which would be produced by truth ; and that any law directed against such falsehood would, in all probability, be a dead letter, and would if carried into rigorous execution, do more mischief in a month than all the lies which are told in the making of bargains throughout all the bazars of India produce in a century."—*Morgan and Macpherson.*

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z, to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

Intentionally—The word intentionally in the second branch of the definition, only applies to the act or omission which the person deceived is induced to do, or omit to do, and it is not necessary in order to sustain a charge under that branch of the definition, that the accused person should also have intended to cause harm or damage as, the result of such act or omission 36 P. R. 1888 Cr.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Scope—Where there is cheating and it is effected by any of the following deceptions, the offence will, it seems, amount to cheating by personation. First by pretending to be some other person:—as if A pretends to be a certain rich banker of the same name. Secondly, by taking a name not his own:—as if A pretends to be B, a person who is deceased. Thirdly, by taking a title or addition to which he has no right:—as if A takes the title of Raja having no right to the title. Fourthly by pretending to be of a country of which he is not—as if a A, an East Indian pretends to be an African. Fifthly, by pretending to be of a calling of which he is not:—as if A falsely pretends to be a clergyman. Sixthly, by pretending to be of a family of which he is not:—as A pretends to be a member of one of the Sovereign Houses of India. Seventhly, by falsely pretending to hold or to have held any office, real or imaginary. Eighthly, by falsely pretending to be related by blood or marriage to any person real or imaginary—as if A falsely

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417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Punishment for cheating.

Notes.—An offence under section 420 is more serious than that under this section. — *See* C. L. J. 1908—A. I. R. 1908 Mad 262. Where

bability. 51 M. L. J. 800. Person inducing another to give on credit certain articles but not intending to pay for them is guilty under section 420 and not section 417. A. I. R. 1928 Lah. 935.

Cases.—9. B. H. C. 448; 25 M. 726, 20 Ind. Cas. 1004; 27 A. 302; 5. C. L. J. 47, 8 A. 303, 7 C. L. J. 325, 13 M. 27; 22 C. 131; 1 B. H. C. 140, 4 P. R. 1905 Cr., 16 P. R. 1911 Cr.; 12 Ind. Cas. 991; 17 C. W. N. 294, A. W. N. 1886, 262, 4 Bom. L. R. 76; 3 M. L. T. 61; 1 L. B. R. 266, Rat. Un. Cr. C. 96, 3 N. W. P. 16, 3 N. W. P. 17, 4 Bom. L. R. 823; Rat. Un. Cr. C. 386, 6 Bom. L. R. 375, 5 C. W. N. 255, Rat. Un. Cr. C. 145, A. W. N. 1902, 151; A. W. N. 1903, 231, 22 W. R. Cr. 82; 23 W. R. Cr. 43; 5 W. R. Cr. 5, 9 P. R. 1884 Cr., 128 P. L. R. 1903; P. L. R. 1900, 38 Cr.; 12 C. W. N. 750, Rat. Un. Cr. C. 470, Rat. Un. Cr. C. 2, 27 A. 561, 6 A. 97, 3 P. W. R. 1908, Cr., 2 C. L. J. 524, 15 C. P. L. R. 97; 19 C. 380, 2 A. L. J. 718, 17 Bom. L. R. 389, 16 Cr. L. J. 706, 16 Cr. L. J. 657, 22 C. W. N. 1001, 67 Ind. Cas. 623; 76 Ind. Cas. 17, 20 C. W. N. 1112, 27 C. W. N. 919, 50 C. 849, 21 A. L. J. 873; 21 A. L. J. 865; 28 C. W. N. 160, 20 C. W. N. 112, 1927 Pat. 337; 1928 Lah. 945, 1925 Lah. 935.

Procedure.—Non-Cognizable.—Warrant—Bailable—Compoundable with permission of the Court—Triable by the Presidency Magistrate or Magistrate of the first or second class.

418.—Whoever cheats with the knowledge that he is likely

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

Scope.—The aggravated form of cheating which is punished by this section is committed when no person who cheats stands in some relation of trust or confidence to the person cheated, either as a clerk, servant, or agent generally, or as a person employed on a particular occasion only, as a broker employed to buy or sell certain goods, as auctioneer

employed to sell property, etc. Whoever undertakes to act as the agent of another person, whatever may be the nature of the agency, is bound by law to protect within the scope of such agency his employer's interests. Cheats by persons like those who are punished when their offence amounts to a criminal breach of trust by sections 407, 408 and 409 appear to be within this section. The offence is committed not only without but also with the knowledge.

Morgan and Macpherson, 386

the Accountant of a Bank, intending to defraud the share-holders, knowingly put forward false balance sheets so that depositors were induced to allow their money to remain in deposit, held, that they were guilty of cheating under s. 418, I. P. C.—16 A 88—A W N. 1894, 23. Where material effect of statements which are false.

Agency Magistrate or Magistrate of the first or second class.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation,

Cases.—17 C 606, 149 P L R 1903; 11 W R Cr. 24; 11 Ind. Cas 590, 114 P L R 1904 7 W. R. Cr. 55, 9 P R 1914 Cr. 4 P. R. 1905 Cr., 19 M L J. 271; 14 P R 1880 Cr., 12 M L J 748, 16 P. R. 1876 Cr., 4 Bom L R. 442; 2 Bom L R 621, A W N 1884, 87; 1 Weir. 480; 1 Weir. 479; 14 P R 1880 Cr., 9 C W N 764, Rat Un. Cr. C. 635, 1 Weir. 477, 4 L B R. 315, (F B), 32 C 775, 7 W R Cr. 55, 16 W R. Cr. 42, 7 W R Cr 51, 7 M L T 201, A. W. N. 1882, 237, 13 P. R 1904 Cr., 16 Cr L J 139, 81 Ind Cas 309

Procedure.—Cognizable.—Warrant —Bailable.—Compoundable with permission of the Court.—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

420. Whoever cheats and thereby dishonestly induces the

Cheating and dishonestly inducing a delivery of property.

person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Scope.—An increased punishment may be awarded where the cheating causes any property to be delivered "dishonestly" that is where it is

of the kind which the first clause of the definition in s 415 describes; where it causes a valuable security as a title deed, bond, bill of exchange, receipt, etc., to be made, altered or destroyed, or where it causes such a document as a deed, bond, bill of exchange, receipt, etc., which has been prepared, but which still continues in the hands of the person who will be bound thereby and has not yet taken effect or come into operation—to be

52 C 347=29 C. W. N. 447=84 Ind Cas 1041. In a charge of cheating it must be considered whether the offence of cheating is compatible with honest action 44 C. L. J 230. Where the balance of consideration of a sale-deed is not paid, the dispute is of a civil nature and there is no offence of cheating 43 C. L. J 287=27 Cr L 588=94 Ind Cas 204. It is but proper to put the exact dates of the commission of offence in the charge 27 Cr L J 909. Deception may be practised by representation made through an innocent agent 101 Ind Cas 458=28 Cr L J. 426=A. I. R. 1927 Sind 161. J went to M and told him that two ornaments of gold were for sale and on the latter, agreeing introduce

An assurance was given by A to J. In fact they were not so and J and A were prosecuted for an offence under s 420. Held, that in order to sustain the conviction of J it was necessary for the prosecution to establish that he acted dishonestly and fraudulently in the transaction since it might be that he was himself duped by A. 28 P. L. R. 171=102 Ind Cas 553=28 Cr L J 585. In a prosecution for cheating the essential points which the prosecution has to prove are that the accused made certain representations knowing them to be false and as a result of such representation money was handed over to the accused. 39 M. L. T 596. Where the dispute between the parties concerned

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there is a common feature between the offence of extortion and that of cheating yet they cannot be regarded as two aspects of one offence 1928 Bom. 346.

Cases—11 B 59, Rat Un. Cr C 312, 33 C 50, 37 Ind Cas. 483, 15 A. L. J 587, 15 A. L. J 807, 10 C. W. N. 1005; 13 C. W. N. 728, 165 P. L. R. 1915 Cr., 16 Cr. L. J 73, 13 A. L. J. 1067; 17 Bom. L. R. 921, 61 P. L. R. 1918, 15 A. L. J. 807, 38 Ind Cas 746, 65 Ind Cas 1005, 68 Ind Cas. 621, 69 Ind. Cas. 152, 67 Ind. Cas. 583, 40 C. L. J 256, 82 Ind Cas 39, 29 C. W. N. 483, 52 C. 188, 88 Ind. Cas 524, 26 Cr. L. J 1303, 75 Ind. Cas.

700; 77 Ind. Cas. 827; 82 Ind. Cas. 57, 40 C. L. J. 288; 39 C. L. J. 122; 51 Ind. Cas. 250, 26 Bom. L. R. 211; 1 Pat. L. J. 391; 36 Ind. Cas. 872; 3 L. L. J. 283; 63 Ind. Cas. 464, 23 Bom. L. R. 340; 64 Ind. Cas. 33, 25 C. W. N. 618; 18 A. L. J. 371, 54 Ind. Cas. 64; 57 Ind. Cas. 103; 58 Ind. Cas. 820, 17 A. L. J. 500, 30 C. L. J. 175; 53 Ind. Cas. 609; 21 A. L. J. 838; 45 A. 588, 1923 Lah. 621; 1923 A. 285; 2 Bur. L. J. 139, 29 C. W. N. 408, 1928 Lah. 551.

Procedure—Cognizable—Warrant—Bailable—Compoundable with permission of the Court—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Fraudulent Deeds and Dispositions of property.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred, to any person, without adequate consideration, any property intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property

according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—This section is intended to cover *benami* transaction in fraud of creditors rather than fraudulent preferences given to one *bonafide* creditor over another. In order to support a conviction under this section, it is necessary to prove that a transfer was (1) fraudulent (2) without adequate consideration and (3) with intent to prevent a rateable distribution among creditors L. B. R. 1893-1900, 593.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate, or Magistrate of the 1st or 2nd class.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished with imprisonment of either

description for a term which may extend to two years, or with fine, or with both.

Scope.—The object of the provisions under this head appears to be the punishment of dishonest and fraudulent debtors. The Civil law

fixes the relative rights of debtors and creditors, and assigns to the latter remedies for the recovery of their just demands. It also provides for the distribution of a debtor's property among his creditors if he becomes insolvent and is unable to satisfy their claims in full. But if he endeavours to evade his just liabilities by a fraudulent disposal of his property, he is treated as a criminal. Ss. 421-24 seem to be intended to protect the general body of creditors from such fraudulent dealings and dispositions of his property (whether by deeds or writings or otherwise) by the debtor as preventor are likely to prevent the fair distribution of his property according to law. *Morgan and Macpherson*, 388 See 22 W. R. Cr. 46, 18 Ind. Cas. 893, 28 C. 314-5 C. W. N. 174.

Procedure.—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate, or Magistrate of the first or second class.

423. Whoever dishonestly or fraudulently signs, executes, or becomes a party to, any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Soope.—The law does not make punishable every false statement in an instrument of transfer. The false statement must relate to the consideration or to the person to be benefited by it in order to become criminal. 37 M. 47. A false and exaggerated declaration of consideration in a sale-deed with the consent of the purchaser, for the purpose of defeating the claims of the preemptor is an offence under this section, the purchaser being guilty under s 423 19 P. R. 1902 Cr., 16 P. R. 1908 Cr., A W. N. 1883, 209, 16 P. R. 1907 Cr : 25 A. 31 A *Kobuliyat* is not a document contemplated under this section. 46 C. 686

Procedure—Non-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with

Dishonest or fraudulent removal or concealment of property.

imprisonment of either description for a term which may extend to two years, or with fine, or with both

Gist of the offence.—To sustain a charge under this section, there must be evidence of the persons intended to be defrauded by the concealment. 16 P. R. 1868 Cr. In the application of this section to the rights of parties should not be encouraged in which the point at issue is to be decided by a Civil Court. In the absence of proof of dishonesty a conviction under this section is unsustainable. 22 Cr. L. J. 142, 2 Pat. L. T. 627, 1 Pat. L. T. 318, 1 Weir. 484. See also 25 M. 729, 1 Weir. 485; 26 M. 481; 1 Weir. 483; 8 W. R. 17 Cr. Where the procedure has not been followed conviction under this section should be set aside. A. I. R. Rang 285. Magistrate's jurisdiction is not taken away by Presidency Towns Insolvency Act. 1929 Rang 14.

Pronedure.—Non-cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the first or second class.

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief"

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person or others jointly.

Illustrations.

(a) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects with the intention of thereby preventing Z from obtaining satisfaction of the debts, and of thus causing damage to Z. A has committed mischief.

(e) A, having insured a ship, voluntarily causes the same to be cast away with the intention of obtaining thereby a benefit from the under-writers. A has

ending thereby to cause damage on the ship. A has committed

(g) A, having joint-property with Z in a horse, shoots the horse intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

Scope.—In the offences against property which have hitherto been considered, the purpose of the offender ordinarily is, to cause a wrongful gain of property, there is a transfer of property which is the subject of the offence from the rightful possessor to the offender or to some other person, or there is an appropriation or conversion of it by the offender. In the offence of mischief, there is not necessarily any transfer of property or any wrongful gain to the offender. The property continues with the possessor (unless the mischief extends to his absolute destruction), but it does not continue in his possession without change or diminution in value. Some injury has been sustained by it, and this injury, if it is intentionally caused, constitutes mischief. This offence is commonly perpetrated from vindictive motives, but absence of spite will be no answer to a charge of mischief, nor is it essential that any motive for the mischievous acts should be assigned, if the intention to cause wrongful loss is shown.—*Morgan and Macpherson* 397. Where the accused removed an obstruction from a property which they believed to be their own, the accused cannot be said to have caused any wrongful loss to the complainant under s 425. 99 Ind. Cas. 414—28 Cr. L. J 158—A. I. R 1927 Lah 145. In order to constitute an offence under this section, something should be done to property contrary to its natural use. 1929 Mad 5.

Intention.—The intention to cause one wrongful loss or damage to the property is essential. An act which harms or lessens the value of property, if it is done by accident or mistake and not wilfully, does not make the doer an offender under the Penal Code, although he may be answerable in a Civil suit for such damage. The wrongful loss may be to any person or to the public, or to any class of the public or any community, as the inhabitants of a particular village. Where the act whi

causes damage is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property, the doer commits no offence (see section 81)—*Morgan and Macpherson*, 391. But in a Bombay case (Rat. Un. Cr. C. 690) it was held that the terms of this section were satisfied where there was a distinct finding as to the prisoner's knowledge and that the question of intention was material only as regards the sentence. See also 2 L. B. R. 158, 1 Weir 488. To sustain a conviction for the offence, it must be shown that there has been an intention or knowledge that, from the destruction of the property wrongful loss should or would accrue. 1 Weir 488, 25 W. R. Cr. 65, 8 Bom. L. R. 849; Rat. Un. Cr. C. 88, Rat. Un. Cr. C. 357, Rat. Un. Cr. C. 189; 1 Weir. 492, 11 Cr. L. J. 163, 9 P. R. 1878 Cr.; 1 Weir 489, 3 B. L. R. A. Cr. C. 17; Rat. Un. Cr. C. 87, Rat. Un. Cr. C. 199, 7 C. W. N. 713; 8 Ind. Cas. 318; 28 Ind. Cas. 493; 26 Ind. Cas. 171.

Damage.—This section does not necessarily contemplate damage of a destructive character. It is only necessary that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it. 12 C. 55, 12 C. 650, 7 B. 126; 9 B. 173; 6 B. L. R. Ap. 3; 23 P. R. 1904 Cr., 10 W. R. 29 Cr.; 1 Weir 487, Rat. Un. Cr. C. 60; 1 Weir 497, 7 Bom. L. R. 86; 1 Weir 496, 4 Bom. L. R. 163; 1 Weir 489, 37 P. R. 1866 Cr., 24 P. R. 1905 Cr. The essence of the offence of mischief is that the property must be destroyed or have some change caused in it or its situation, which destroys or diminishes its value or utility or affects it injuriously. U. B. R. (1897-1901) Vol. 1, 347; Rat. Un. Cr. C. 185; Rat. Un. Cr. C. 318.

Property.—All kinds of property whether moveable or immoveable may be the subject of this offence. Some cases are—

cably destroyed, but does not include an easement. Rat. Un. Cr. C. 387. Postal receipt is such a property. 24 P. R. 1905 Cr.

Where the defence raised a bona-fide claim of the accused acted with any Rat. Un. Cr. C. 432; Rat. Un.

Cr. C. 432.

426. Whoever commits mischief, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Scope.—Under this section mischief must be done to the property belonging to another person but where a person's right is declared by a

Civil Court he commits no mischief by damaging the property. 7 Pat. L. T. 79=93 Ind. Cas. 40=27 Cr. L. J. 392=A 1. R. 1926 Pat 244. Where there was no finding that the branches of trees were cut with intent to cause wrongful loss or damage but it appeared from the evidence that the branches were cut at the instance of the accused and with the knowledge that it was likely to cause wrongful loss, the accused can be convicted under this section. A 1 R 1927 All 610 In an offence of mischief change i e physical change in property is necessary Only diminishing its use or utility is not sufficient. 1928 Mad 49.

Cases—1 Weir. 497 ; 1 Weir 496 ; 1 Weir. 552, 1 Weir. 491 ; 1 Weir. 487, 3 M. L. T. 147, 5 M 401, A W. N. 1882, 209 ; 8 Bom. L. R. 851, 15 C. 388, 28 A 204, 10 B 103, U. B. R. (1892—1896) Vol 1, 259, 11 C. W. N. 467, 21 B 536, 24 A. 555 ; 9 A. L. J. 162, 7 Ind. Cas. 855, 8 B. 295, 73 Ind. Cas 805, 14 L. W. 728 ; 2 P. L. T. 394, 62 Ind. Cas. 331, 44 Ind. Cas 451 ; 5 Pat. Law 114 ; 43 Ind. Cas. 405, 86 Ind. Cas 36, 83 Ind. Cas 898, 96 Ind. Cas. 210 ; 51 B. 587 ; 8 L. R. 128 Cr.

Procedure.—Non-cognizable—Summons—Bailable—Compoundable in case of loss to private persons—Triable by any Magistrate

427. Whoever commits mischief, and thereby causes loss or mischief, causing damage to the amount of fifty rupees or to the amount of fifty upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope—In estimating the amount of the loss or damage caused, the actual loss only should be taken into consideration and not the damage which, in consequence of such loss, may be occasioned to the sufferer. It is not clear whether to support the charge under this section, the court must be satisfied not only that the offender intended to cause wrongful loss but also that he intended (or knew himself to be likely) to cause wrongful loss to the amount of fifty rupees or upwards. It will be reasonable to infer such an intention in the absence of satisfactory proof on behalf of the accused person, shewing that he did not contemplate or intend to cause mischief to this amount—*Morgan and Macpherson* 393. See also 16 C. W. N. 263=13 Ind. Cas 826, 21 Bom L. R. 247, 17 A. L. J. 343, 22 A. L. J. 820 To support a conviction for an offence under this section it is sufficient to prove that the property was in the possession of the complainant, it is not necessary to prove his title. 25 A. L. J. 1010.

Proceduro—Non-cognizable—Warrant—Bailable—Compoundable in case of loss to private persons—Triable by Presidency Magistrate, or Magistrate of the first or second class.

428. Whoever commits mischief, by killing, poisoning, Mischief by killing or maiming, or rendering useless any animal maiming animal of the or animals of the value of ten rupees or value of ten rupees upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Scope.—It must be proved that the destruction or damage is of that wilful description which falls within the definition of mischief. But it must, it seems, be understood that the animal destroyed is the subject of property. Wild animals which have been captured as bears, tigers, etc., kept in cages could probably be deemed within the meaning of the section.—*Morgan and Macpherson*, 304, U. B. R. 1905, Penal Code, 25

Maiming.—In its primitive meaning the verb "to maim" involves the notion of mutation of some part of the body useful for fighting. The framers of the Code did not intend this restricted meaning only of this expression. The expression would fairly include the amputation of any member, or the injury, of an animal by which its speed, or endurance or use, was permanently diminished. L. B. R. (1872—1892), 404; U. B. R. 1905; Penal Code, 28, 1 Weir 500; 1 Weir 498, 34 P. R. 1888 Cr.; A. W. N. 1884, 87. The cutting off completely of the ears of an ass is maiming under this section. 22 M. L. T. 68.

Procedure.—Cognizable-Warrant-Bailable-Not-Compoundable-Triable by Presidency Magistrate or Magistrate of the first or second class.

429. Whoever commits mischief by killing, poisoning, Mischief by killing or maiming, or rendering useless any elephant, maiming cattle, &c. of any camel, horse, mule, buffalo, bull, cow, or value or any animal of the ox, whatever may be the value thereof, or value of fifty rupees. any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Scope.—The words "bull" or "cow" include the young of these animals, and the expression "any other animal" does not mean an animal of the kind already mentioned, but refers to an animal of a different genus altogether. The section specifies the more valuable of the domestic animals, without any regard to the age, but in respect of other kinds of animals not so specified, the section would not apply, unless the particular animal in question was shown to be of the value of fifty rupees or upwards. *Houri Mandal v. Jafar*, 22 C. 467.

Maiming.—The cutting off of the ears of a horse amounts to "maiming" within the meaning of this section. 21 M. L. J. 843. But

where a person inflicts a wound on an animal with a spear whereby it is disabled for some days, his offence falls within s 426 and not within this section. 3 Bom L. R 503 The cutting off of nearly one-half of one ear of a mare whereby the animal's sense of hearing is not impaired, is not maiming. 18 Bom. L. R 289 Killing of an animal by the thief does not merit double conviction for theft and mischief 26 Cr. L. J. 277-84 Ind. Cas. 341-A. I R. 1925 Pat. 34.

Intention.—The provision of this section requires that the offence of mischief must have been committed as a result of the acts specified therein and in order to constitute that offence it is necessary that the accused should either intend to cause or know that he is likely to cause, wrongful loss or damage 3 Cr L. J 107 See 14 C P L R Cr. 159; L B R (1893-1900), 633, 7 Ind Cas 415 where conviction both under this section and section 379 were held to be bad

Procedure—Cognizable-Warrant-Bailable-Not-Compoundable-Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class

430 Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Scope.—This section is applicable equally to irrigation channels, as to other sources of irrigation such as tanks and ponds 1 Weir 510. Where an accused is charged under this section his intention to cause wrongful loss is the essential element to be considered 29 Ind Cas 670; 7 M. H C Ap 39, 4 L. B R 149, 1 Weir 507, 1 M 262 To bring an act under this section, it must be shown to cause, or be likely to cause, a diminution of the supply of water for agricultural purpose U. B R. (1897-1901), Vol I 349, 5 A. L J 159, 1 Weir 507; 16 Cr L. J 542; 34 M L J 206, 69 Ind Cas 95-23 Cr L. J. 655, 12 Cr L J 551-12 Ind Cas 537, 1 M 262, 11 Cr L J 621, 25 P L R. 1910, Rat. Un. Cr. C. 217, 8 C W N 370, 1 Weir 510, 5 A L J. 159; 1 Weir 503; 1 Weir 504, 1 Weir 505, 1 Weir 508, 25 W R Cr. 69; 54 Ind Cas. 617, 24 Cr. L J. 830, 24 Cr. L J. 467 (1), 32 C L J. 476, 22 Cr L J. 270 The offence under this section requires as an essential element of it that the accused had the intention to cause or the knowledge that their act was likely to cause wrongful loss to the complainant 26 Cr L J 1100. Every person has a perfect right to do a particular act upon his own land, and if a person breaks open his bund or opens his own sluice, can complain of it, until some injurious consequence follows from it. As

soon as such a consequence follows, the offence becomes a cause of action. In sum breaking the bund or in opening it up the complainant's crops. 21 S. L. J. 1233. Where a matter is decided, whether a bund was put up or not by one of the parties, there ought not to be a conviction for an offence under this section. 98 Ind. Cas. 474=27 Cr. L. J. 1354. The words "diminution of the supply of water for agricultural purposes" in this section cannot be limited to those cases only where the water has been allowed either to go waste or has been diverted for a non-agricultural purpose. The section read as a whole also refers to cases where the water is intended for use by particular persons for particular purposes and is diverted by an accused person for his own purposes though of a like nature. 21 S. L. R. 107=98 Ind. Cas. 49=27 Cr. L. J. 1233.

parts of India disputes about water for irrigation are numerous and are carried on with great violence. When two villagers draw their supply from one tank and the scantiness of the supply renders it necessary that they should each be supplied for a regulated number of hours, it is not unusual for the people of one village to attempt undue appropriation during the night, an act which, if discovered by the rival village, ends in an affray of a very serious character. Such an act causing wrongful loss to individuals or to the "public" or community of the injured village will, it seems, be punishable under the present section. Mischief committed by drawing water used for domestic and other like purposes and thereby causing a diminution of the supply, will like wise be punishable under this section—*Morgan and Macpherson*.

Procedure—Cognizable—Warrant—Bailable—Compoundable with permission of Court—Triable by Court of Session Presidency Magistrate or Magistrate of the 1st or 2nd class.

431. Whoever commits mischief by doing any act which Mischief by injury to renders, or which he knows to be likely public road, bridge, river, to render, any public road, bridge, or channel navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Public road A path through a jungle is not a road in the sense in which that word is used in this section. L. B. R. (1893—1900) 629.

Scope—In the definition of mischief, loss or damage to the public is mentioned. This section applies when the mischief is to a public road navigable river, etc, and is of the kind mentioned. An obstruction or impediment caused not wilfully but by some negligent act or omission is

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ridge,
See

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—
—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st or 2nd class

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both

Mischief by causing inundation or obstruction to public drainage attended with damage

Scope.—Works of irrigation are within the protection of section 430. Wilful injuries to embankments where such injuries are not punishable by a special law are punishable under this section. Works of public drainage such as those which exist or are in course of construction in some of the Presidency towns or other big cities are included in the present section if such works are not constructed under a local or special Act containing the necessary provisions for their protection.—*Morgan and Macpherson*, 396. In order to constitute an offence under this section, it is not sufficient to prove probable consequential damage to other property. 1 Weir 512—4 M. H. C. App. 15

Procedure—Cognizable—Warrant—Bailable—Not compoundable—
—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class

433. Whoever commits mischief by destroying or moving any light house or other light used as a sea mark, or any sea mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea mark, buoy, or other such thing, as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both

Mischief by destroying, moving or rendering less useful, a lighthouse or sea-mark

Procedure—Cognizable—Warrant—Bailable—Not compoundable—
—Triable by Court of Session,

soon as such a consequence follows, the injury and not the original act, becomes a cause of action. In such a case the mischief consists not in breaking the bund or in opening the sluice but in flooding or withering up the complainant's crops. 21 S. L. R. 107-98 Ind. Cas. 49-27 Cr. L. J. 1233. Where a matter is prominently one for the civil court to decide, whether a bund was put up or not by one of the parties, there ought not to be a conviction for an offence under this section. 98 Ind. Cas. 474-27 Cr. L. J. 1354. The words "diminution of the supply of water for agricultural purposes" in this section cannot be limited to those cases only where the water has been allowed either to go waste or has been diverted for a non-agricultural purpose. The section read as a whole also refers to cases where the water is intended for use by particular persons for particular purposes and is diverted by an accused person for his own purposes though of a like nature. 21 S. L. R. 107-98 Ind. Cas. 49-27 Cr. L. J. 1233.

Object.—Injuries to a river or well or any natural or artificial channel or reservoir of water, or any work for the purpose of irrigation, if such injuries cause or are likely to cause a diminution of the supply by wrongfully drawing off or diverting water are punishable under this section. In some parts of India disputes about water for irrigation are numerous and are carried on with great violence. When two villagers draw their supply from one tank and the scantiness of the supply renders it necessary that they should each be supplied for a regulated number of hours, it is not unusual for the people of one village to attempt undue appropriation during the night, an act which, if discovered by the rival village, ends in an affray of a very serious character. Such an act causing wrongful loss to individuals or to the "public" or "community," as it seems, be punishable under the section by drawing water used for domestic purposes causing a diminution of the supply, section—*Morgan and Macpherson*.

Procedure—Cognizable. Warrant-Bailable. Compoundable with permission of Court—Triable by Court of Session Presidency Magistrate or Magistrate of the 1st or 2nd class.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, or channel, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Public road. A path through a jungle is not a road in the sense in which that word is used in this section. L. B. R. (1893-1900) 629.

434 Whoever commits mischief by destroying or moving any land-mark fixed by the authority of public servant, or by any act which renders such land mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cases.—8 A. L. J. 925; 1 A. L. J. 619, 30 C. 1084

Procedure.—Non-cognizable.—Warrant—Bailable—Not-compoundable by Presidency Magistrate or Magistrate of the first or second class.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, "or (where the property is agricultural produce) ten rupees or upwards," shall be punished with imprisonment of either description for a term which may extend to seven years, and also be liable to fine.

Legislative changes.—In this section the words quoted have been inserted by Act 18 of 1182 s. 10

Scope.—When mischief is committed by means of fire or any explosive substance and the evidence enables the Court to conclude that the offender not only intended to cause wrongful loss, which intention is necessary to the committing of "mischief," but either intended or knew himself to be likely to cause wrongful loss or damage to the amount of Rs 100 there may be a conviction under this section. If the evidence falls short of this, but is sufficient to show that mischief to the amount of 50 rupees has been caused, whether by fire or by any means whatsoever, the offender may be convicted under section 427. If the offence proved is simple mischief and there is no aggravating circumstance in the case, the offender is punishable under section 426.—*Morgan and Macpherson*, 397. But an accused cannot be convicted both under this section as well as under s. 436 because when, in the application to the same act of to be awarded unless it is case may be different where nents for the same act, for different species. 11 B. H. C. 13.

Procedure.—Cognizable—Warrant—Bailable—Not Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope—This highly penal provision is for the punishment of the offence mentioned in s 435 when such offence is attended with the aggravating circumstance, that the offender contemplated the destruction of a house, place of worship, or place used for the custody of property. The grass or mat huts of the lowest classes are placed on a level with the substantial, secure and valuable dwellings of the rich, and it is left to the discretion of the Judge to distinguish in awarding punishment between cases of great and of trifling mischief. Mischief done is inconsiderable, but the mischief done is not a mere trifling mischief. It stood to mean a mischief done in a hut, or temporary building. See also 7 P. R. 1923 Cr 111. are several thatched huts is a building 7 P R 1903 Cr Section 285 is not applicable where the act of the accused is wilful and not rash or negligent. To such a case s 435 may be applicable. Rat. Un Cr. C 126. A man may commit mischief in certain cases on his own property. In such cases it seems that a person causing mischief by fire to his own house will be punishable under this section. If death or hurt is caused by fire, the offender may be punished under the chapter of offences against the human body.—*Morgan and Macpherson*, 398, see also 8 Ind Cas. 399. Whipping in addition to sentence under this section is not permissible. A. I. R. 1928 Oudh 111.

Procedure—Non-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session

437. Whoever commits mischief to any decked vessel, or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope—Decked vessel of any size, however small, and such undecked vessels as the large river craft of Bengal and the class of native

vessels engaged in the coasting trade and otherwise on the western coast of India, appear to be meant. If life is endangered the offender may be dealt with under the provisions of the preceding chapter.—*Morgan and Macpherson*, 399.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Example.—If A. having insured his ship, voluntarily causes or attempts to cause it to be set on fire and destroyed with the intention of causing damage to the insurer, he has committed an offence punishable under this section, although the vessel may be his own property.—*Morgan and Macpherson*, 399

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—The sense in which the word "vessel" is here used is explained by s. 48. In the great navigable rivers of Bengal and probably elsewhere, the crews of river craft, acting in league with persons on shore, sometimes run their vessels aground or ashore, and thus enable their confederates to plunder the cargo.—*Morgan and Macpherson*, 399

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be

punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Procedure.—Cognizable—Warrant—Bailable—Not-compoundable—Triaible by Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "Criminal trespass."

Of Criminal Trespass.—The substantive offences which the Code makes punishable under this head of the chapter of offences against property, considered by themselves, are such as might be visited with a light punishment; but when they are attended with aggravating circumstances and above all when they are viewed in relation to some other offence, as murder, theft etc., the commission of which is the main object of the offender, they become grave offences. The criminal trespass, in whatever form and whether aggravated or not, if it is preparatory to the commission of an offence against person or property, deserves severe punishment. "Criminal trespass," the offence which is first defined and punished, enters into almost all the subsequent offences which are contained under this division. Those penal provisions in fact punish this offence with various degrees of punishment when it is attended with certain aggravating circumstances. The trespass may be aggravated by the way in which it is committed or by the end for which it is committed.—*Morgan and Macpherson*, 400.

Division of the chapter.—The division begins by defining the offences of (1) criminal trespass, (2) house-trespass, (3) lurking house-trespass, (4) lurking house trespass by night, (5) house-breaking, (6) house-breaking by night. The definition of the lower of these offences includes all cases which are within the definition of the higher offences. The four last-named offences are house-trespasses, with different circumstances of aggravation, and house-trespass by night is a species of

Distinguishing nature of the crime.—But the offence itself is to be distinguished from those previously noticed, inasmuch as it does not

necessarily imply dishonesty, fraud or deceit. The criminal trespasser whose object is "to intimidate, insult or annoy," for instance, has not necessarily any design against the property of the sufferer; perhaps his object is only a frolic *Ibid.*, 400.

Scope.—In this definition the entry and the intention with which a person enters are essentials. The latter part of the definition makes unlawful continuance on property equivalent to an unlawful entry, the intention being criminal—*Ibid.*, 401. Unlike several sections of the code where *mens rea* consists in intention or knowledge this section requires that the accused should either unlawfully enter upon property of another or having lawfully entered thereon continued to remain unlawfully with intent thereby to intimidate, insult or annoy the person in possession of such property or with intent to commit the offence. 100 Ind. Cas. 829=28 Cr. L. J. 349=A. I. R. 1427 Sind. 159. A trespasser cannot acquire possession by the very act of trespass. A true owner can re-enter but he must not use more force than is necessary. A I R 1928 P. 124. Unlawfully entering on the property and continuing to remain there is a continuing wrong. A. I. R. 1928 P. 124. This section does not require the land to be in the actual possession of the complainant. 1928 Bom. 221.

Entry into or upon property.—"Property" here, must from the nature of the provision, mean corporeal property, either land or a building, tent or vessel; and possession would seem to mean actual occupation as contradistinguished from a constructive possession, or still more a vacant possession. It would seem, a person entitled to a right of way or other incorporeal right is not a person in possession of property within this definition and that there can be no criminal trespass "into or upon" such property—*Morgan and Macpherson*, 401. The complainant in a prosecution for criminal trespass must be in physical, as opposed to juridical or constructive possession. 10 Bur. L. T. 77; 17 Cr. L. J. 378; 67 Ind. Cas. 618, 74 Ind. Cas. 856, 74 Ind. Cas. 534, 16 A. L. J. 501; 12 A. L. J. 151; 5 P. R. 1886, Cr.

Constructive entry upon property by a servant is not an entry within the meaning of this section. To constitute an offence under this section, there must be an actual personal entry by the person accused. 5 L. B. R. 278=5 Cr. L. J. 415.

Intention.—The intention constitutes the entry criminal. Merely

A mere knowledge that the trespass is likely to cause insult or annoyance to the owner of the property does not amount to an intent to insult or annoy within the meaning of this section but where the trespasser knows that his trespass is practically certain in the natural course of events to cause insult or annoyance to the owner of the property, it is open to the Court to infer an intent to insult or annoy. It is a question of fact whether this presumption of intent is displaced by proof of any independent object of the trespass. 33 M. L. J. 729 (F. B.), 82 Ind. Cas. 149, 47 All. 855=26 Cr. L. J. 1273, A. I. R. 1925 Nag. 36. The essence of an offence under this section is the intent in committing the trespass and merely to trespass is not ordinarily an offence. It must be proved that some criminal intent was present in the mind of the accused and it does not at all follow that because an act is unlawful and is one that the civil law will restrain or for which it will compensate the injured party in damages, it is necessarily criminal. 81 Ind. Cas. 351; 75 Ind. Cas. 292. See also 41 M. 156, 47 Ind. Cas. 77, 13 C. L. R. 212; 82 P. R. 1906 Cr., 13 P. R. 1908 Cr.

With intent to annoy.—A person entering another's house after having taken all precautions to avoid discovery cannot be said to have entered with intent to cause annoyance to the persons in possession. 27 P. L. R. 385.

Remains there, etc.—If a person enters into property in the possession of another or remains there with an intent other than to intimidate, insult or annoy him or to commit any offence but with the knowledge that his act is likely or certain to cause annoyance or insult to the person in possession he is not guilty of criminal trespass 33 M. L. J. 729 (F. B.).

Any person in possession.—The words "any person in possession" do not mean only a complainant in possession there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act 25 C. W. N. 425; see also 49 Ind. Cas. 99.

Bona-fide—Where the accused have acted *bona-fide*, there was no question of criminal trespass 1924 Mad. 862, 20 Ind. Cas. 219; 15 Ind. Cas. 317, 12 A. L. J. 790, 27 A. 296.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass.

Building—A court-yard partly surrounded on the front by a mud wall with no roof over it nor any door or gate-way is not a building or

house within the purview of this section 49 Ind. Cas. 864; 4 L. B. R. 24; but see 55 P. R. 1879 Cr. But a thatched hut is such a building. 36 Ind. Cas. 584. See also 9 P. R. 1887 Cr. Entry into a cattle pen is not an offence under this section. 28 P. R. 1905 Cr. Entry in the enclosure is not house trespass. 1928 All. 607; 1929 Mad. 135

Possession.—There cannot be any conviction under this section where the property is not in the possession of the complainant and where the accused had no intention of annoying him. 17 A. L. J. 334.

Custody of property.—5 N. W. P. 307.

Injury, annoyance etc.—An accused who had no intention of causing annoyance to any one and took measures to avoid it cannot be convicted of an offence under this section even though a feeling of annoyance be the inevitable consequence of being found out. 52 Ind. Cas. 274. In order to constitute an offence there must be an intention to intimidate, insult or annoy any person in possession. 81 Ind. Cas. 716; 2 Bur. L. J. 17, A. W. 1882, 224, 20 C. 65. Intention as to use particular structure depends upon particular facts. 1929 Sind. 17.

Bona fide claim.—An entry into a house in assertion of a *bona fide* claim of right cannot constitute criminal trespass which requires an intent to commit an offence or to intimidate, insult or annoy any person in possession 1925 P. 167; see also 75 Ind. Cas. 353 (2); 15 A. L. J. 808; 18 P. R. 1888 Cr., 16 C. W. N. 1007, Rat. Un. Cr. C. 390.

443. Whoever commits house trespass having taken precau-

Lurking house trespass tions to conceal such house-trespass from
some person who has a right to exclude or
eject the trespasser from the building, tent, or vessel which is the
subject of the trespass, is said to commit "lurking house-trespass."

444. Whoever commits lurking house-trespass after sunset

Lurking house-trespass and before sunrise is said to commit "lurking
house trespass by night."

Notes.—Vide 4 W. R. Cr. 19.

445. A person is said to commit "house trespass" who com-

First—If he enters or quits through a passage made by himself, or by any abettor of the house trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person other than himself, or an abettor of the offence for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having open a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house-door which Z had lost, and commits house-trespass by entering Z's house, having open the door with that key. This is house-breaking.

(g) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

Notes.—The offence of outraging a woman's modesty not being committed that offence 146=26 Cr. L. J. entrance into the J. 4=29 P. L. R. matters were merely closed. 66 Ind. Cas. 422=23 Cr. L. J. 278

Illustration (a).—Vide 4 Lah. 399.

446. Whoever commits house breaking after sunset and before sunrise is said to commit "house-breaking by night."

Notes.—Effecting an entrance into a house at night by scaling a wall constitutes house-breaking by night. 2 W. R. Cr. 65. When the door of a house was found broken, an offence under this section was committed. 4 W. R. Cr. 19.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Possession.—For a conviction under this section the finding on the point as to who was in possession of the land in dispute is necessary. 45 Ind. Cas. 677. Lessee of a District Board road for collection of tolls is not in possession of the road. 55 Ind. Cas. 721. Where possession is permissive at its inception subsequent refusal to move does not amount to criminal trespass. 26 P. L. R. 247.

Intention.—It is not necessary that intimidation, insult, or annoyance should be the primary intent with which the entry is made.* It is sufficient if the intent to commit one or other is involved in the action. The presumption is against a person entering on property in possession of another without that others' consent except in strict accordance with law. U. B. R. (1892—1896) Vol. I. 264. There must be an express finding that the accused intended to cause annoyance for a conviction under section 448. 101 Ind. Cas. 457=23 Cr. L. J. 425=8 A. I. C. R. 50. Where a decree-holder tries to get possession of land by arbitrary means he commits criminal trespass. A. I. R. 1928 Nag. 79. Intention must

be proved before recording a conviction under this section. A. I. R.
1928, All. 671.

Cases.—8 Ind. Cas. 219; 11 A. L. J. 340; 30 Ind. Cas. 455; 5 Cr. L. J. 438, 1 Weir. 721; 23 Ind. Cas. 487; 15 C. W. N. 224; 29 P. R. 1882 Cr.; 1 P. R.

1007 Cr, 18

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W. N. 1902,

51 Rat. Un.

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512 J. I. Weir

1 Weir 517, 0 F&L L. 1. 700, 0 Lab. L. J. 578; 08 IND. Gas. 357; A. 1.

R. 1025 Oudh, 50; 8 Lah, 331; 52 M. L. J. 143.

Procedure.—Cognizable.—Summons.—Bailable.—Compoundable.—
Triable by any Magistrate

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Cases.—50 Ind. Cas. 834; 138 P. L. R. 1904; 21 M. L. J. 781; 9 Ind. Cas. 895; 14 P. L. R. 1901; U. B. R. (1897—1901) Vol. I, 350; 1 Weir. 528; 1 Weir. 537; 16 C. P. L. R. 182; 3 Ind. Cas. 895; 4 C. L. J. 169; Rat. Un. C. C. 328; 88 Ind. Cas. 725; A. I. R. 1925 Pat. 157.

House-trespass—To constitute the offence of house-trespass it is necessary that an entry should have been effected into the house or building. Mounting the roof of a house with intent to enter the house is not house-trespass nor even an attempt to commit house-trespass but merely a preparation for the offence of house-trespass. 12 Bur. L. T. 222. Entry on a verandah does not amount to house-trespass. 26 Ind. Cas. 306; see also, 15 P. R. 1907 Cr.; see 1 Weir 524; Rat. Un. Cr. C. 188.

Intention — Under this heading, the testator's intention is to be ascertained from the will and the facts and circumstances surrounding its execution.

3 Ind

P.

Trial by any Magistrate.

449. Whoever commits house-trespass in order to the commit-

House-trespass in order to commit offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Morgan and Macpherson, 404.

In order to the committing — The intention and design is the commission of an offence. To bring the offender within these severe provisions it is not necessary that he should do any act punishable of the offence, or that there should be any proof of proof of the offence, in the evidence will suffice for a conviction under this section. — *Morgan and Macpherson, 405.*

Procedure — Cognizable — Warrant — Not-bailable — Not-compoundable — Triable by Court of Session.

450. Whoever commits house-trespass in order to the commit-

House-trespass in order to commit offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Procedure. — Cognizable — Warrant — Not-bailable — Not-compoundable — Triable by Court of Session.

451. Whoever commits house-trespass in order to the commit-

House-trespass in order to commit offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

Scope—If the entry in a house is made with the consent of the owner and possessor of the house, no offence under this section can be deemed to have been committed 15 Cr. L. J. 351. Where the accused was found in the complainant's house at night, having gone there with the intention of visiting the complainant's daughter-in-law, a woman of loose character, and probably with her connivance, held that he was not guilty of an offence under s. 456. See also 19 A. 74; 20 Ind. Cas. 622. See also 1 Weir. 534. In order to constitute an offence under this section all the facts necessary to constitute the offence of simple house-trespass must first be established and it must be further shown that the house-trespass was committed for the purpose mentioned in this section 41 A. 587.

Cases—Rat Un Cr. C. 484, 7 Cr. L. J. 230; 8 P. W. R. Cr. 1921; 60 Ind. Cas. 666, 26 Cr. L. J. 1343 6 Lah. L. J. 578; 15 Cr. L. J. 351; 59 Ind. Cas. 550, 20 Cr. L. J. 347—50 Ind. Cas. 827.

Procedure.—Cognizable—Warrant—Bailable—Compoundable with Court's permission.

1st and 2nd class.

452 Whoever commits house trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assaults, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Notes—Collection of lathies and brickbats on the property unlawfully entered is sufficient proof of threatening behaviour. 1928 Pat. 124. Where no further fact is proved than house-trespass a conviction under this section is bad. 38 C. L. J. 161—25 Cr. L. J. 163—76 Ind. Cas. 292.

Procedure—Cognizable—Warrant—Not-bailable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

453. Whoever commits lurking house trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Notes.—Cumulative sentence under ss 453 and 379 is :—
6 W. R. Cr. 62.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Notes.—Any such trespass, in order to the committing of any offence punishable with death or with transportation for life is punishable by sections, 449, 450—*Morgan and Macpherson*; see also 8 M. H. C. R. App. 6; see for cases 100 Ind. Cas 120—28 Cr. L. J. 248—1927 Mad. 343; 10 A. 146.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

455 Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Notes.—The offence of house breaking is complete when entry into the house is effected. 28 Cr. L. J. 554—102 Ind. Cas 490—1927 All. 536.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Intention.—In a prosecution for lurking house-trespass by night under this section, the burden of proving what his intent was lies upon the accused. 29 A. 49; 42 P. R. 1881. The presence of an accused in the

house at night shows his guilty intention and it is for him to rebut the presumption. 13 A. L. J. 625. See, also, 14 P. R. 1883 Cr.; 2 M. 30; 50 P. L. R. 1919; 49 Ind. Cas. 103. To sustain a conviction under this section it is not necessary to specify the intention in the charge. 4 Mys. L. J. 190.

Punishment.—U. B. R. (1897-1901) Vol I. 354; 14 C. P. L. R. 16.

Cases.—1 L. B. R. 355; 38 A. 517; 20 C. W. N. 1075, 25 Cr. L. J. 1186 (2); 1924 A. 764; 2 Pat. L. T. 140; 6 Pat. L. T. 585; 1929 All. 764, 16 C. W. N. 696.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class.

457. Whoever commits lurking house-trespass by night or

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Adultery.—Where it was proved to the satisfaction of the court that have sexual intercourse proved that he did properly convicted

To sustain a conviction under this section it is necessary that the court should be in a position to say which specific offence the accused intended to commit. 1 Weir 533.

Cases.—6 Cr. L. J. 378, 15 Bom. L. R. 564; 32 P. L. R. 1902; Rat. Un. Cr. C. 302; 24 P. R. 1914 Cr., 34 P. R. 1885 Cr.; 2 A. L. J. 173; Rat. Un. Cr. C. 689; 6 H. M. C. App. 2; U. B. R. (1892-1896), Vol. I, 274; 79 P. L. R. 1916, 28 P. W. R. 1915; 1 B. 214; 8 Bom. L. R. 850; 17 P. L. R. 1905; 5 W. R. Cr. 49, 11 Cr. L. J. 389; 4 P. L. R. 1905; Rat. Un. Cr. C. 293, A. W. N. 1882, 224, U. B. R. (1897-1901) Vol I, 355; 1 Weir 535; 1 Weir 536 31 P. R. 1901 Cr.; A. W. N. 1886, 290; A. W. N. 1886 42; 57 P. R. 1877 Cr., U. B. R. (1892-1896) Vol I, 273 8 Bom. L. R. 855; 9 P. R. 1890 Cr., L. B. R. (1893-1900), 267; 13 P. R. Cr. 1919; 1 P. L. T. 221, 71 Ind. Cas. 247; 1922 Nag. 27; 79 P. L. R. 1915; 28 P. W. R. 1915 Cr., 39 Ind. Cas. 309; 27 P. W. R. 1917 Cr.; A. L. R. 1925 Lah. 22; 26 Cr. L. J. 716, 26 P. L. R. 777; 7 Lah. L. J. 277.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first or second class

458. Whoever commits lurking house-trespass by night or

Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint, or for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person or for putting any person in fear of hurt, or of assault, or of

wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Scope.—This section only applies to the house-breaker who actually has himself made preparation for causing hurt to any person or for assaulting any person or for wrongfully restraining any person and so on, and not to his companions as well who themselves have not made such preparation. 1923 Lah. 509.

Cases.—6 Lah. L. J. 622.

Procedure.—Cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

459. Whoever, whilst committing lurking house trespass or

Grievous hurt caused whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or im-

prisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—This section provides for a compound offence the governing incident of which is that either "lurking house trespass" or "house-breaking" must have been completed, in order to make the person who commits that offence either by causing grievous hurt or attempt to cause death or grievous hurt, responsible under this section. In other words, the causing of the grievous hurt or the attempt to cause death or grievous hurt, must be done in the course of the commission of the offence of lurking house-trespass or house breaking, and at the time when it is being committed. 8 A 649. See also 13 C. P. L. R. 125. The offence of house-breaking is complete when entry into the house is effected

554—A. I. R. 1947 200, 230.

Procedure.—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

460. If, at the time of the commission of the offence, any person

All persons concerned in the commission of the offence, whether by trespass or house-breaking by night punishable where death or grievous hurt caused by one of them, jointly cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—This section is intended to provide for the punishment of persons who were jointly concerned in the committing of the house-trespass or house-breaking altogether irrespective whether they were the persons who caused or attempted to cause grievous hurt 8 A. L. J. 575. The expression "at the time of committing house-breaking by night" must be

342=23 Cr L J. 104=65 Ind. Cas. 628.

Procedure—Cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session

461. Whoever dishonestly or with intent to commit mischief,

Dishonestly breaking open receptacle containing property, breaks open or unfastens, any closed receptacle, which contains or which he believes to contain, property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—This section and the next section, though ranged under the head of criminal breach of trust, are not within the scope of the definition of criminal breach of trust. The expression "closed receptacle" relating to the offence of criminal breach of trust may include not only a room, a part of a room, or closet, etc., but a box or closed packing—*Morgan and Macpherson*, 408

Procedure—Cognizable—Warrant—Bailable—Not-compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class

- 462.** Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
- Procedure.**—Cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Session, Presidency Magistrate, or Magistrate of the 1st or 2nd class.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

- 463.** Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

Forgery.—The offence of forgery is committed when, by a counterfeit, a document is falsely made to represent some other supposed document. The relation which this of penal law may be thus stated. intentions, assurances or directions by means of written instruments. Upon the authenticity of such instruments, the security of many civil rights, especially the right of property, frequently depends; it is therefore of the highest importance to society to exclude the numerous frauds and injuries which may obviously be perpetrated by procuring a false and counterfeited written instrument to be taken and acted on by no means actually accomplishing such is sufficient prudence to part of the intent is clearly

manifested by an act done in furtherance and in part execution of that intention.

... only because the facts which it
 ... forged document. Where the
 ... purporting to be signed by a
 ... um, a person to whom it is
 shown is deceived, because he is induced to suppose that the fact certified
 is accredited by the public servant whose certificate it purports to be ;
 and he is deceived in that respect, whether the fact certified is true or
 fa

pu
 th
 ce
 ... signature, but by the
 ... may therefore be
 ... e. And the docu-
 it is false. Where

money or other property is obtained dishonestly by a document of the
 latter description, that is, where it is false merely as containing a false
 statement, or representation, the offence of cheating, but not of forgery,
 is committed.

When a document, whether it is forged document, or a genuine
 ... order that it may
 ... ceeding taken by
 ... mislead the judge
 of fabricating false

What constitutes forgery.—To constitute a forgery, the false
 document must be made—"with intent to cause damage or injury to the
 public" or to any class of the public or to any community. Forgeries of
 public securities, of the records of courts of justice, of registers kept by
 public servants, of documents certifying that a person has the requisite
 medical skill and fitness to act as a master mariner, or has competent
 medical skill, etc., or of such documents as are mentioned in illustration
 (j) and (k) of the following section, seem to come within these words.

"Or to any person." Besides such documents as tend to a public
 damage or injury, every false document, by whatever name it is called,
 which is intended to cause damage or injury to an individual, is included.

Intent to defraud.—The expression "intent to defraud" implies
 conduct coupled with intention to deceive and obtain property. The
 words "defraud" involves two
 the person deceived that is infrin
 him but not necessarily deprivation of property. 42 C. L. J. 215—
 Ind. Cas. 534—26 Cr. L. J. 1574 In order to constitute forgery
 document need not be intended to support a false claim or a false

96 Ind. Cas. 850 = 27 Cr. L. J. 994 = A. I. R. 1926 Mad. 1078. In forgery the intent to defraud is essential A. I. R. 1926 Cal. 224. If a man intends to gain an unfair advantage by deceitful means and uses a false document, for that purpose his conduct is fraudulent. 27 Cr. L. J. 994. dishonesty or = 27 Cr. L. J. for supporting

"Or to support any claim or title." Even if a man has a legal claim or title to property, he will be guilty of forgery, if he counterfeits documents in order to support it. Any false document purporting to create, extend, transfer, or otherwise to support, a right or alleged right is included.

"Or to cause any person to part with property." As orders or requests for the payment of money or delivery of goods, etc.

"Or to enter into any express or implied contract." As when a man is induced to employ another in a certain capacity by forged documents respecting his qualifications.—*Morgan and Macpherson*, see also 21 A. 113.

For illustrative cases.—Vide 15 Bom. L. R. 708; U. B. R. (1892-1896) Vol. I, 276; U. B. R. (1892-1901) Vol. I, 356; Rat. Un. Cr. C. 12.

the offence of forgery document or false part questions are "(1) Is accused? (3) Was it testions are answered 48; 10 C. L. R. 181. > a claim to property. eaning of this section.

Forgery committed for the purpose of defending one. if such document himself, does not 25 A. 31.

464. A person is said to make a false document.—

First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document, or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a

person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed ; or

Secondly—Who, without lawful authority, dishonestly or fraudulently by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or that, by reason of deception practised upon him, he does not, know the contents of the document or the nature of the alteration.

Illustrations.

(a) A has a letter of credit upon B for Rs 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000 and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b.) A, without, Z's authority affixes Z's seal to a document purporting to be from Z to A, with the intention of obtaining from B the purchase-

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorised B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f.) Z's will contains these words, "I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name intending that it may be believed that the whole was left to himself and C. A has committed forgery.

into a blank endorsement B commits forgery.

(h) A sells and conveys an estate to Z. A, afterwards in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z intending it to be believed that he had conveyed the estate to B before he

will. A has committed forgery.

(j) A writes a letter, and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances, induces Z to sign the

the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper, and signs it as though it had been a bill of exchange, owing the fact, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill.

(c) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditor, and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Fraudulently.—An intent to defraud implies some thing more than mere deceit. The advantage intended to be secured or the harm intended to be caused need not have relation to property or be such as is implied in the term 'dishonestly', but it must be some thing to which the party perpetrating is not entitled either legally or equitably. There can be no intention to defraud where no wrongful result was intended or could have arisen from the act of the accused. 28 Ind Cas 102. To constitute a document a false document, it must be shown that it was made with such an intention as is implied in the term fraudulently or dishonestly. A mere intention to deceive is not sufficient. 1 Weir 542. See also 22 B 768, 28 A 358, 13 M 27, 6 C W. N. 382, 2 J G 11; L. B. R. (1894-1900) 437, 25 C 512, 22 C 313, 13 B 515 N; 9 W R Cr. 20, 6 P R 1895 Cr. Absence of intention to cause it to be believed that the document was signed by another person negatives offence. 52 C. 47-29 C. W. N. 447-26 Cr L J 401. In case of forgery, false date of execution and fraudulent intent are necessary element. A. J. R. Rang. 117.

Making a false document—A person makes a false document who dishonestly or fraudulently signs a document with the intention of causing it to be believed that the document was signed by a person by whom he knows it was not signed. 7 Ind Cas 176. The "making" of a document or part of a document, does not mean "writing" or "printing" it, but signing or otherwise executing it. The falsity (of a false document) consists in the document, or part of a document, being signed or sealed with the name or seal of a person, who did not in fact sign or seal it. 8 C L. R. 572. Such a document must be dishonestly or fraudulently made, signed, sealed or executed by the person who is charged and it must be made with the intention of causing it to be believed that such document or part of a document was made, signed, sealed and executed.

not appear to have been kept in the regular course of business and does not contain entries that it ought to have contained, therefore, it cannot be acted upon in order to convict a person whose name appears therein as having received money, and it is quite a different thing to hold as a positive fact that that account book is forged. In the absence of any other evidence, no prosecution should be allowed to be launched on the basis that it was forged. 98 Ind. Cas 56=27 Cr. L. J. 1240=A. I. R. 1927 Pat. 47.

Clause (2).—A document which has once existed as a genuine document, may become "false document" by reason of some addition, or omission, or by the obliteration of some material part, Vide
 obliteration of
 nce specifically
 seems not to fall

Clause (3).—A document may be a false document, although it is signed or executed by the person by whom it purports to be signed or executed. This happens, where a person [as in the case given in the illustration (1)] is fraudulently induced to execute a will, or material

Explanation (1)—It is a false document if the offender makes it falsely in the name of any other person, although that name happens also to be the offender's own name. A man who makes a promissory note in his own name without any false description or addition and with an honest intention, if he afterwards uses or attempts to use the note, pretending that it is signed by another person of the same name does not by this false representation make the promissory note a "false document." It

to induce another to give credit to it as genuine and authentic where it is false and deceptive. A man who having conveyed land afterwards for fraudulent purpose executes a document, purporting to be a prior conveyance of the same land intends by this false document to obtain credit by deception, the document purporting to have been made at a time earlier than the true time of execution—*Morgan and Macpherson*, 416

Explanation (2)—If a man forges the name of another person real or fictitious or the name of a deceased person, he makes a false document if the document is made for a fraudulent or dishonest purpose. It is none the less false, because the name used is a mere fiction—*Morgan and Macpherson*, 416.

Cases.—Entering previous payments on the back of bill is not forgery 3 C. W. N. 278. A charge of forgery cannot lie against a person who has forged name. 17 C. ledger, which contained money had been paid. *Held* that the prisoner was guilty of forgery. 1 Ind. Jur. N. S. 46. The alteration of a date in a bond is an alteration in a material part thereof, although the alteration is not made for the purpose of saving limitation. 14 P. R. 1881. Cr., see also 21 W. R. Cr. 41, 20 W. R. Cr. 49, 4 L. B. R. 46; L. B. R. (1893—1900), 266; 13 C. 349, 77 Ind. Cas. 423, (1918) Pat. 35, 41 M. 589, 43 Ind. Cas. 828, 3 Lah. 373.

False description.—It would be going too far to hold that, whenever the executant of a document attaches a false description to his name, he comes within the purview of this section. But a false description may make a document a forgery when it is found that the accused, by giving such a false description, intended to make out or wanted it to be believed that it was not he that was executing document, but a fictitious person. 19 M. L. J. 78.

465 Whoever commits forgery shall be punished with imprisonment of either description for a term

Punishment for forgery. which may extend to two years, or with fine, or with both.

where the dishonest or In s. 464, is made out blishing, however clearly error might be used to In cases under this section an accused is that to which the Court must look and not some more remote and less probable intention. A. W. N. 1892, 243, see also 16 Cr. L. J. 76. Clear proof is required in a case of forgery. It should be clearly shown upon whom the fraud was committed U. B. R. (1892—1896) Vol. I, 279. A document false in fact B when concocted to commit fraud completes the offence 28 M. 90 F. R.

Cases.—4 P. R. 1885 Cr., 10 W. R. Cr. 7, 7 W. R. Cr. 23; 6 W. R. Cr. 41; 10 W. R. Cr. 23, 6 W. R. Cr. 78, W. R. F. B. 71; 10 W. R. Cr. 61; 2 A. L. J. 444; 13 M. 27; 1 Weir. 540, 5 A. 221; 8 A. 653; 6 N. W. P. 56; 22 C. W. N. 572; 26 Ind. Cas. 668, 18 S. L. R. 199.

The father is liable for the forgery of his son if the son is a minor.

should be perpetrated. Nor is a using or uttering the forged document,

document when it became due, or even that he actually paid it and so prevented damage or injury,—*Morgan and Macpherson*.

Procedure.—Non-cognizable—Warrant-Bailable—Not compoundable—
Triable by court of Session, Presidency Magistrate or Magistrate of the 1st class.

466. Whoever forges a document purporting to be a record or proceeding of or to a Court of Justice, or Forgery of record of Court or of public register, &c. a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit or to take any proceedings therein, or to confess judgement, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Elements of fraud or dishonesty—The elements of fraud or dishonesty, as explained in the Penal Code, must be present in the mind of the accused to bring his case under this section 28 C 434. Alteration of name and age in an education certificate and using it as genuine one with a view to obtain the official appointment constitute, in the absence of a satisfactory explanation, offences under ss 466 and 471 2 L. B. R. 216. This section is not intended to apply to cases of persons, whose duty it is to make entries in a public book, and who knowingly make a false entry, but to cases where a certificate or other document is forged by some unauthorised person with a view to make it appear that it was duly issued by a public officer. 7 C L R. 356.

Cases—14 C 513 Rat. Un. Cr. C. 583; 1 Weir 541, Rat. Un. Cr. C. 83, 77 Ind. Cas 825, 86 Ind. Cas 993, 3 Mys. L. J. 38.

Procedure—Non-cognizable—Warrant—Not-bailable—Not compoundable—Triable by Court of Session

467. Whoever forges a document which purports to be a Forgery of valuable security or a will or an authority to security, will &c. adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or receive or deliver any money, moveable property, or valuable

contract and in support of his request handed to him a closed envelope containing a letter alleged to be written by the Governor of the Punjab. It was proved that as a matter of fact the letter was forged by at the instigation of J. Held on those facts, that it may be presumed that S wrote the document knowing it will be used to defraud W and on that the Magistrate rightly convicted S of the offence under s. 468 I. P. Code and J of the offences under s. 468 read with s. 109 and ss 471 and 511 I. P. Code, namely of the offences of abetment of forgery and attempt to cheat. 9 Lah. L J 103-101 Ind Cas. 493-28 Cr. L. J 461 Forgery though a substantive offence, partakes the nature of an attempt. It is usually an act done in furtherance of some criminal design. If it can be proved that the purpose of the offender in committing the forgery is to obtain property dishonestly, or if his guilty purpose comes within the definition of cheating (section 136) he is punishable under the present section. The intention of the forger may be fairly inferred in most cases from the contents of the forged document.—*Morgan and Macpherson*

Procedure.—Not-cognizable—Warrant—Not bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Scope—A, with the intention of harming B's reputation or knowing that what he does is likely to have this effect writes a letter in imitation of B's hand writing purporting to be addressed to confederate in some disgraceful and dishonest transaction and shows this letter to other persons. He has committed this offence. As to what written statements may be said to harm a person's reputation, the chapter (XXI) of defamation should be consulted, *Morgan and Macpherson*. For a case under this section. Vide. to W R Cr 61, 2 B. L. R. A Cr 12

Procedure—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

470. A false document made wholly or in part by forgery is "A forged document." designated "a forged document"

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

93 Ind. Cas. 66; 27 Cr. L. J. 177, 27 Cr. L. J. 994; 29 O. C. 1; 7 A. I. C. R. 58; 1929 P. 60.

Procedure—Non-Cognizable.—Warrant.—Bailable.—Not-Compoundable.—Triable by the same court as that by which the forgery is triable. When the forged document is a G. P. Note.—Cognizable.—

172. Making or possessing counterfeit seal, etc., with intent to commit a forgery punishable under section 467, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or with such intent has in his possession any such seal, plate, or other instrument knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and also be liable to fine.

Scope—This section covers only the case of a counterfeit of an existing thing. 81 Ind. Cas. 986

Procedure.—Not-Cognizable.—Warrant.—Bailable.—Not-Compoundable.—Triable by Court of Session

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

Cases.—13 W. R. Cr. 16

Procedure—Not-Cognizable.—Warrant.—Bailable.—Not-Compoundable.—Triable by Court of Session.

474. Whoever has in his possession any document knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in section 467, shall be

shed with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Gist of the offences.—To support a charge under this section it is necessary to prove (1) that the accused made or caused to be made any such device or mark as is described in section 467 of this Code, with intent that the same should be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material, upon, or in the substance of which, any such device, or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Not-compound-

475. Whoever counterfeits upon or in the substance of any

Counterfeiting a device or mark used for authenticating document described in section 467 or possessing counterfeit-marked material.

material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark, shall be used for the purpose of giving the appearance of authenticity to any document then

forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material, upon, or in the substance of which, any such device, or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

Proofs.—To support a charge under the latter part of the section it is necessary to prove (1) that the accused was in possession of the papers

476. Whoever counterfeits, upon or in the substance of,

Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

any material, any device, or mark, used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark, shall be used for the purpose of giving the appear-

ance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Procedure—Not-cognizable—Warrant—Not-bailable—Not-compoundable—Triable by Court of Session.

***477.** Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface or secretes or attempts to secrete, any document which is, or purports to be, a will, or an authority to adopt a son, or any valuable security, or commits mischief in any respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Soope.—The words "purports to be" in this section make the law of India upon this matter what it has in a long succession of cases, been held to be in England. In order to constitute an offence under this section, it is not necessary that the document must be stamped and receivable in evidence. *r Weir 552.* Where a document purports to be a valuable security under this section, the question whether it is invalid for want of consideration is immaterial. *r Weir 554, r Weir 553.* To support a prosecution under this section, the proof of the fraudulent secretion of a document is sufficient and it is not necessary to prove the validity of such a document. *97 Ind Cas 1054—27 Cr L J. 1230.*

Procedure—Not-cognizable—Warrant—Not-Bailable—Not-compoundable—Triable by Court of Session.

477A. Whoever, being a clerk, officer, or servant, or employed or acting in the capacity of a clerk, officer, or servant, wilfully, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, or account, which belongs to, or is in the possession of, his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry, omits or alters, or abets the omission or alteration of, any particular from or in, any such book, paper writing, security, or account, shall be punished with imprisonment

description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded, or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

Legislative changes—This section has been added by Act III of 1895 s 4.

Scope—It is sufficient to satisfy the words of the section, that the person charged under the section is one who undertakes to perform and does perform the duty of a clerk or servant, whether, in fact, he is a clerk or servant, or not, and though he is under no obligation to perform such duties and receives remuneration. By fraud is meant an intention to deceive, whether it be from any expectation of advantage, to the party himself or from ill will towards the other is immaterial. 1 Weir 554. Where a partner in a firm is appointed as such to manage the business of the firm or to write its accounts, he acts as its servant; and if he falsifies the account, he is liable under this section. 6 Bom. L. R. 553; See also 14 Ind Cas 603.

Case.—1924 Cal. 983, 20 A. L. J. 662, 54 Ind Cas 892, 23 C. W. N. 935, 88 Ind Cas 189; 26 Cr. L. J. 353, 23 A. L. J. 657, 47 A. 948, 18 S. L. R. 274

Procedure—Not-Cognizable-Warrant-Bailable-Not-Compoundable-Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

Of Trade, property and Other Marks.

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark, and, for the purpose of this Code, the expression "trade mark" includes any trade mark which, registered in the register of trade marks kept under the Patents, Designs, and Trade marks Act, 1883, and any trade-mark which, either with or without registration, is protected by law in any British possession or foreign State in which the provisions of the one hundred and third section of the Patents, Designs, and Trade-marks Act, 1883, are under order in Council for the time being applicable.

Legislative changes—Ss. 478-479 have been substituted for the original by the Indian Merchandise Marks, Act (IV of 1889) s 3.

Trademarks Act, 1883.—Stat. 46 and 47 Vict. C. 57.

Trademark—A mark to be a trademark or property mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mark in itself, does not it should do so. goods with the of proof of any transfer or assignment of the mark or of the former having succeeded to the business or the good will of the latter, is not sufficient to warrant a conviction for infringement of trade or property mark. 27 C 776—4 C. W. N. 423 The word "trade" taken in its ordinary acceptance does not include lending money at interest. 22 P. R Cr 1903—14 P. L. R. 1903 The getup does not constitute a trademark. 2 L. B. R. 159 Goods having the mark in question must be proved to be manufactured by complainant and to be reputed to be his manufacture alone 1928 Cal. 235.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

Property-mark.—A property-mark, is intended to denote ownership over all moveable property belonging to a person whether it is all of one kind or different kinds. So long as the person owns moveable properties his property-mark impressed upon them remains his, though any particular article out of it may, after such impression, pass out of his hands and cease to be his. The function of a property-mark to denote certain ownership is not destroyed because any particular property on which it was impressed has ceased to be of that ownership. 6 Bom. L. R. 513—1 Cr L. J. 581.

480. Whoever marks any goods, or any case, package, or other receptacle containing goods or uses Using a false trade-mark, any case, package, or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.

Cases.—29 M. 569; 13 Ind. Cas. 927; 4 L. B. R. 192; 10 C. W. N. 107; 50 Ind. Cas. 165; 46 Ind. Cas. 402.

481. Whoever marks any moveable property or goods, or any Using a false property- case, package, or other receptacle contain- mark, ing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that

property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

482 Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for using a false trade mark or property-mark
Cases.—26 B 289, 12 Cr L J 246, 17 C. W. N. 227; 11 C. W. N. 887, 7 M. L. T. 309, 27 Ind. Cas. 902, 23 Ind. Cas. 689, 8 C. W. N. 421; 32 C. 969, 1 Weir 556, 31 C. 411, 1 Weir 557, 8 C. W. N. 41; 81 Ind. Cas. 922, A. I. R. 1925 Cal 149, 95 Ind. Cas. 275, A. I. R. 1928 Lah 186

Procedure—Not-Cognizable—Warrant—Bailable—Compoundable with Court's permission—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

483. Whoever counterfeits any trade-mark or property-mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a trade-mark or property-mark used by another.
Procedure—Not-Cognizable—Warrant—Bailable—Compoundable with Court's permission—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class.

484 Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant, to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the property is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Counterfeiting a mark used by a public servant.
Procedure.—Not Cognizable—Summons—Bailable—Not-Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the first class.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of counterfeiting a trade-mark or property-mark, or has in his possession a trade-mark, or property-mark, for the

Making or possession of any instrument for counterfeiting a trademark or property-mark.

purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

Procedure.—Not cognizable—Summons—Bailable—Not-compoundable—Triable by Court of Sessions, Presidency Magistrate or Magistrate of the 1st class.

486 Whoever sells, or exposes, or has in his possession for sale or any purpose of trade or manufacture, any goods or thing with a counterfeit trade-mark or property-mark affixed to, or impressed upon the same, or to or upon any case, package, or other receptacle in which such goods are contained, shall, unless he proves—

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suspect the

genuineness of the mark, and

(b) that, on demand made by, or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,
he punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting trade mark.—In order to prove that a trade mark is in imitation of another, it is not necessary that there should be a resemblance in every case. It is sufficient if the resemblances are of such a nature as to be calculated to mislead. Bom. L. R. 732 = 11 C. W. N. 232 = 3 C. W. N. 97. The onus is upon the accused to show that he comes within the exception. 8 C. W. N. 421. Counterfeiting a label falls within this section. 16 Bom. L. R. 78. See also 32 C. 431; A. W. N. 1897. 99; 32 P. R. 1902 Cr. No conviction under this section stands for the use of another firm's bottle innocently and according to practice. A. I. R. 1928 Cal. 873.

Procedure.—Not-cognizable—Summons—Bailable—Compoundable with Court's permission—Triable by Presidency Magistrate, Magistrate of 1st or 2nd class.

Explanation.—For the purposes of this section and of sections 489B, 489C, and 489D, the expression “bank-note” means a promissory note or engagement for the payment of money to bearer or demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

Legislative changes.—Ss. 489A to 489D have been added by Act 12 of 1899 s. 2.

Sanpe—A conviction under this section cannot stand unless it is proved that the accused were performing the process or part of the process of counterfeiting a note. Where no counterfeiting was done and where there was no part of any process which could have ended in production

and not any other verb. 7 Lah. 80=27 Cr. L. J. 638=27 P. L. R. 514. The object of the legislature in enacting the section is to stop the circulation of forged note by punishing all persons who, knowing or having reason to believe them to be forged do any act which could lead to their circulation, 7 Lah. 80=27 Cr. L. J. 638=94 Ind. Cas. 414. A person who knowingly sells a forged note to another is guilty under section 489B, whether the purchaser knows it to be forged or not. 7 Lah. 80=27 Cr. L. J. 638=44 Ind. Cas. 414

Procedure.—Cognizable—Warrant—Not Bailable—Not compoundable—Triable by Court of Sessions.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in, or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—To convict a man under this section for using a forged note as genuine, the possession of the note does not necessitate the explaining the fact of his possession but the prosecution must prove that he knew it to be forged when he passed it. 81 Ind. Cas. 551.

Procedure —Cognizable—Warrant—Not Bailable—Not compoundable—Triable by Court of Sessions.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, and intending to use the same as genuine, or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Procedure.—Cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Sessions.

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument, or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Scope.—In order to establish a charge under this section what the prosecution has to prove in the first place, is that the machinery, instrument or material found in the possession of the accused person is such as would be used in the production of a counterfeit note, and if that is proved the next element which is to be proved is that the accused knew or intended that such article would be used for the purpose of counterfeiting currency-notes. In *M. L. T. 109*. Possession of articles sufficient in expert's opinion to be counterfeit, without explanation of the same by the accused raises a presumption of dishonest intention. *A. I. R. 1928 All. 759*.

Procedure.—Cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490. [Breach of contract of service during a voyage or journey.—Repealed by Act III of 1925.]

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by breach of contract to attend on and supply wants of helpless person, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Application.—This section does not apply to a person who is engaged only as an ordinary cook to a family and is not bound by a contract to attend on or to supply the wants of any helpless person. Rat. Un. Cr. C. 354=Cr. Rg. 43 of 1887.

Principle.—‘Persons who contract to take care of infants, of the sick, and of the helpless, lay themselves under an obligation of a very peculiar kind, and may, with propriety, be punished if they omit to discharge that duty. The contract may be made with a person who is unable to perform it, and the contract may be made with a person who is unable to perform it. They are liable to be punished for breach of the contract. The sanction of the penal law’—Report of the Law Commissioners.

492. [Breach of contract to serve at a distant place to which servant is conveyed at master's expense.—Repealed by Act III of 1925]

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493 Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have carnal intercourse with him, shall be liable to fine.

Scope.—The offence here made punishable is committed when a man, whether married or unmarried, induces a woman to become, she thinks, his wife, but in reality his concubine. The form of

marriage ceremony depends on the race or religion to which the persons contracting the marriage may belong. When the races are mixed as in India, and religion may be changed or dissembled, this offence may be committed by a person falsely causing a woman to believe that he is of the same race or creed as herself, and thus inducing her to contract a marriage, in reality unlawful, but which according to the law under which she lives, is valid. Suppose a person half English and half Asiatic by blood, calls himself a Mahomedan or a Hindu and by this deception causes a Mahomedan or a Hindu woman to go through the ceremony of marriage in a form which she deems valid and to co-habit with him, he has committed this offence. A man who deceives a woman into the belief that a certain ceremony which he causes to be performed by some accomplice, constitutes a valid marriage and thus induces the woman to co-habit with him, may be punished under this section—*Morgan and Macpherson*, 433.

Procedure—Not cognizable—**Warrant**—Not bailable—Not compoundable—**Triable** by Court of Session.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.

Essentials—Where polygamy is not legal, the charge of bigamy requires to be supported by the following proof: (1) the first marriage must be proved to be a valid one; (2) the second marriage must then be proved to have been contracted while the first husband was living; and (3) the second marriage must be proved to be a valid one. *Morgan and Macpherson*, 434. The offence of bigamy is committed when a man marries a second wife while his first wife is living. It is not necessary that the second wife should be a woman. In some cases, a man may be punished for bigamy if he marries a second wife while his first wife is living, even if the second wife is a minor or a child.

(2) that she married during the lifetime of the first husband; and (3) taking place during belonged to a caste, in which is committed. 7 of the bans of marriage for such an attempt. Is made between void

and invalid marriages. A. I. R. 1928 Lah. 844.

Cases—1 Weir 565 ; 1 Weir 563 ; Rat Un. Cr. C. 190 ; 4 P. R. 1874 Cr. ; 19 P. R. 1876 Cr. ; 1 Weir 561 ; 18 P. R. 1881 Cr. ; 27 P. R. 1878 ; 10 C. W. N. 982 ; 10 B. 340 ; 26 C. 336 ; 7 A. L. J. 10 ; 10 M. 218 ; 2 P. R. 1869 ; 18 C. 264 ; 32 P. R. 1870 Cr. ; 4 B. 330 ; 6 C. W. N. 343 ; 19 P. R. 1878 Cr. ; 19 C. 627 ; 550 ; 6 B. 126 ; 12 C. P. L. R. C. 531 ; Rat. Un. Cr. C. 77 ; 13 Cr. L. J. 204 ; 16 C. W. R. 56 ; 48 Ind. Cas. 493 ; 23 Ind. Cas. 65 ; A. I. R. 1925 6 A. 209 ; 7 P. L. T. 443 ; 24

A. L. J. 155.

Procedure—Not cognizable—Warrant—Bailable—Not compoundable—Triable by Court of Sessions.

495. Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Object—"The act which, in the English law, is designated as bigamy, is always, an immoral act. But it may be one of the most serious crimes that can be committed. It may be attended with circumstances which may excuse, though they cannot justify it.

"The married man who, by passing himself off as unmarried, induces a modest woman to become, as she thinks, his wife, but in reality his concubine, and the mother of an illegitimate issue, is guilty of one of the most cruel frauds that can be conceived. Such a man we would punish with exemplary severity.

"But suppose that a person arrives from England and pays attention to one of his country women at Calcutta. She refuses to listen to him on any other terms than those of marriage. He candidly tells her that he is already married. She still presses him to go through the ceremony with her. She represents to him that if they live together without being married she shall be an outcast from society, that

Scope.—The offence of rape has been defined by section 375. When the sexual intercourse does not amount to that offence, and when it takes

has not been committed. The character of both husband and wife, and the terms on which they live together should be ascertained.

fore conviction can take place. 28 Cr. L. J. 311=100 Ind. Cas. 535=A. I. R. 1927 Oudh. 140. Section 61 of the Divorce Act does not forbid the Crown to prosecute and punish an alleged adulterer under s. 497 when moved to do so by the injured husband. A. I. R. 1928 Lah. 50. In cases of adultery direct fact need not be proved. Fact is to be inferred from circumstances. 1928 Pat. 375. Every intercourse amounts to an offence. A. I. R. 1928 B. 530.

Object.—This section is intended for the protection of husbands who alone can institute prosecution for offences under it. 1 Weir. 569.

Cases.—A. W. N. 1881, 112; 11 C. 81; 7 C. W. N. 143; 18 P. R. 1873 Cr.; 5 A. 233; Rat. Un. Cr. C. 539; 5 C. 566 (F. B.); 13 C. L. R. 125; 21 W. R. Cr. 13; 4 P. R. 1874 Cr.; 2 B. H. C. 117; 5 B. H. C. Cr. 17; 1 P. R. 1875 Cr.; 4 Bom. L. R. 435; Rat. Un. Cr. C. 4; Rat. Un. Cr. C. 150; 3 C. 688; 2 W. R. Cr. 35; 5 B. L. R. 109; 1 P. R. 1874; 145 P. L. R. 1917; 44 Ind. Cas. 969; L. R. 6 A. 209 Cr.; A. I. R. 1928 Cal. 248.

Procedure.—Not-cognizable—Warrant—Bailable—Compendable—Triable by Court of Session, Presidency Magistrate, or Magistrate of the 1st class.

493. Whoever takes or entices away any woman, who is, Enticing or taking away or detaining with a criminal intent a married woman, and whom he knows or has reason to believe to be, the wife of any other man, from man, or from any person having the care of, her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains

with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Sense.—The offence which the present section punishes is the taking or enticing away for the unlawful purpose mentioned, a married woman from her husband or from those who have the care of her on his behalf. It is immaterial whether the wife is shown to be a consenting party or not. Her consent is not in question. To support a charge under this section, it must be proved (1) that the woman is married and that fact is known to the offender, or that he has reason to believe it; (2) that she has been taken away or enticed from her husband, or from her relatives or friends with whom she may be living in her husband's absence; (3) that the woman may have illicit sexual intercourse with himself or some other person. Persons who conceal or detain a woman who has been taken away, knowing the circumstances and having the guilty intention above mentioned, are also punishable under the present section. It is this intention which is the main ingredient in the offence. A person who, being a relative of a married woman would take her away from her husband's house or would conceal her from her husband on account of the misconduct or cruelty

The two essential ingredients of an offence under this section are that the woman enticed away is the wife of the complainant, and that the fact of the marriage is known to the accused. 15 Ind. Cas. 813; 10 A. 580; 1 Weir. 569; 9 P. R. 1839 Cr.; 1 Weir. 571; 16 P. R. 1891 Cr. The fact and the legality of the marriage is a material element in such a case. 11 A. L. J. 994; 9 M. 9; 20 A. 166; 3 O. C. 342; 17 P. R. 1898 Cr.; 2 P. R. 1879 Cr.; 2 S. L. R. 22 Cr.; 5 P. R. 1894; 6 M. 374; 26 Cr. L. J. 1376; 5 Cr. R. 252.

It must be proved that the accused enticed the complainant's wife from her husband's or father's house with intent to have illicit intercourse with her. 1 C. W. N. 498; 13 A. L. J. 251; 4 W. R. Cr. 50; 15 P. R. 1883 Cr.;

an accused person
 and did not care for
 against the accused
 L. R. 429. In a pro-
 he woman is an active
 should be a light one.
 or to restrain. Where the woman was willing to live with another
 and there was nothing to show she was in any way restrained,
 held that she was not "detained" within the meaning of this section.

1903 Ind. Cas. 559=28 Cr. L. J. 703=A. I. R. 1927 Oudh. 318. The omission to state in a charge sheet that the accused had knowledge or reason to believe that the person abducted was a married woman, would not by itself affect the prosecution under this section. 28 Cr. L. J. 419=

to give rise to the inference that she exercised the option under Mahomedan Law. 1928 Lah. 898. Where the accused is of the neighbouring-village and of the same brother hood as that of the girl, he may be presumed to have necessary knowledge that she is the lawful wife of her husband. 1928 Lah. 898.

Cases.—1 Weir. 573 ; 34 A. 589 ; 181 P. L. R. 1914 ; 78 P. R. 1914 ; 15 P. R. 1883, Cr. ; 129 P. L. R. 1915 ; 78 P. R. 1866 Cr. ; 7 Lah. L. J. 217 ; 2 Weir. 235 ; 39 P. L. R. 1911 ; 123 P. L. R. 1914 ; 319 P. L. R. 1913 ; 12 Cr. L. J. 500 ; 8 B. L. R. 83 ; 33 P. L. R. 1910 ; 31 P. R. 1883 ; 26 M. 463 ; 18 P. R. 1873 Cr. ; 23 P. R. 1895 Cr. ; 27 P. R. 1879 Cr. ; 22 P. L. R. 1910 Cr. ; A. W. N. 1898, 186 ; 12 P. L. R. 1910 ; 18 Cr. L. J. 1016 ; 51 Ind. Cas. 842, 44 Ind. Cas. 971 ; 44 Ind. ; Cas. 966 ; 42 Ind. Cas. 763 ; 42 A. 401 ; 55 Ind. Cas. 863 ; 18 A. L. J. 311 ; 55 Ind. Cas. 863 ; 24 Cr. L. J. 636 ; 45 M. L. J. 543 (2) ; 69 Ind. Cas. 458.

Procedure.—Not—Cognizable—Warrant—Bailable—Compoundable
Triable by Court of Presidency Magistrate or Magistrate of 1st or 2nd class.

CHAPTER XXI.

OF DEFAMATION.

499 Whoever, by words either spoken or intended to be read,
Defamation. or by signs or by visible representations, mak
or publishes any imputation concerning a
person, intending to harm, or knowing or having reason to believe
that such imputation would harm the reputation of

said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says, "Z is an honest man, he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch intending it to be believed that Z stole B's watch. This is defamation unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published.

Whether or not it is for the public good, is a question of fact.

Second Exception.—It is not defamation to impute anything of a public nature to any public servant, so far as his character appears in that conduct, and no further.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(a) A says "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says "I think Z is a dishonest and stupid fellow," A is not within this exception, as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

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Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—An imputation in the form of an alternative or expressed ironically, may amount to defamation, unless that imputation does not tend to lower the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(a) A says, "Z is an honest man, he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

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Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration.

... eve ... tion ... in pre- any society particular duties of which the public is interested.

Publication of reports of proceedings of Courts.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(a) A says "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But, if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity", A is not within the exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z, "Z's book is foolish, Z must be a weak man; Z's book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says, "I am not surprised that Z's book is foolish and indecent, for he is a weak man and libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child; a master censuring in good faith a servant; a schoolmaster censuring in good faith a scholar; a person having authority in the presence of another for remembrance of his name within this exception.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Accusation preferred in good faith to authorized person

Illustration.

If A in good faith accuses Z before a Magistrate: If A in good faith complains of the conduct of Z, a servant, to Z's master; If A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Imputation made in good faith by person for protection of his or other's interest.

Illustrations.

(a) A, a shop-keeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a caution in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Caution intended for good of person to whom conveyed or for public good.

Principle.—The offence of defamation, as it is defined in this Code, consists in the injury offered to reputation, not in any breach of the peace or other consequence that may result from it. The essence of the offence consists in its tendency to cause that description of pain, which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. No distinction is made between written and spoken de-

tion. The offence is committed whether the words are spoken, written, printed or engraved, or in whatever manner the words, signs, or visible representations conveying the imputations, are expressed.—*Morgan and Macpherson*.

Scope.—Mere assenting to a third party's report of what one had said may be defamatory: 85 Ind. Cas. 361=26 Cr. L. J. 521=A. L. R. 1925 Mad. 320=47 M. L. J. 746. Defamatory statement made by a party to a civil proceeding is punishable, 16 S. L. R. 159=84 Ind. Cas. 58=26 Cr. L. J. 234. But Courts should be careful when a complaint of defamation is filed with respect to proceedings in a Civil Court to see whether the provisions of s. 209, Cr. Pro. Code and of the Cr. P. Code generally have not been evaded. 86 Ind. Cas. 1805=26 Cr. L. J. 947. Criminality in case of official proceedings as such has no abatement.

criminal liability is determined exclusively by the secular Court. A defamatory statement whether on oath or otherwise, or contained in a plain

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defamatory. 97 Ind. Cas. 431=27 Cr. L. J. 1119. A news paper is not a person and therefore it is not a criminal offence under s. 499 to defame a newspaper 99 Ind. Cas. 347=28 Cr. L. J. 139=A. L. R. 1927 Rang. 49. An imputation of insolvency against a person in the way of

Harm the reputation.—In order to establish the offence under this section, it is not necessary to prove that actual harm has been caused.

ed. It is sufficient to show that harm was intended to the complainant's reputation or that the accused person knew or had reason to believe that the imputations made by him would harm his reputation. 9 Ind. Cas. 775. If an imputation has no tendency to harm a person in his reputation, it will not amount to defamation although it affect some other person.

Intention—The essence of the offence is the intention or knowledge of the offender that the imputation may harm some person's reputation. Where no such intention or knowledge exists, the offence of defamation is not committed. The journeyman printer may be acquitted of defamation on the ground that in setting the types for printing defamatory matter and so aiding towards the circulation thereof, he had not the intention described in the definition, while the person who wrote the defamatory matter, for printing which the journeyman ignorantly set the types, may be convicted, because it may be clear that his purpose was to defame.—*Morgan and Macpherson*, 442. It is not necessary to constitute an offence under this section that there should be evidence to show that the complainant has been injuriously affected by such alleged defamation. The legislature merely that there should be an intent and ill harm
6 N. W. P. 66.

Where defamatory statement is made on a privileged occasion the complainant must show malice in fact. 7 C. W. N. 246 ; 11 C. W. N. 390.

What constitutes publication.—18 B. 205 ; 1 Weir 579 ; 1 Weir 580 ; 10 P. R. 1910 Cr. ; 14 P. R. 1889 Cr.

Cases.—1 Weir 613 ; 3 A. 815 ; 27 M. 238 ; 1 Weir 579 ; 22 A. 234 ; 7 A. 906 ; 8 P. R. 1891 ; A. W. N. 1893, 207 ; A. W. N. 1891, 1881 ; A. W. N. 1890, 170 ; A. W. N. 1883, 167 ; A. W. N. 1883, 46 ; 18 P. R. 1889 Cr. ; 23 P. R. 1880 Cr. ; 2 C. P. L. R. 198 ; 6 B. L. R. App. 42 ; 11 W. R. 534 ; A. W. N. 1883, 36 ; 1 Ind. Cas. 99 ; 5 Ind. Cas. 714 ; 7 Cr. L. J. 250 ; 3 W. R. Cr. 45 ; 2 W. R. Cr. 36 ; 3 W. R. Cr. 45 ; 14 W. R. Cr. 27 ; 1 Weir 585 ; L. B. R. (1893-1900), 206 ; 21 P. R. 1887 Cr. ; 1 Weir 594 ; 7 C. W. N. 74 ; Rat. Un. Cr. C. 140 ; 25 B. 151 ; 14 M. 379 ; 1 Weir 607 ; 1 Weir 608 ; 1 Weir 612 ; 39 P. R. 1887 Cr. ; 26 M. 43 ; L. B. R. (1872-1892), 617 ; 1 Weir 575 ; 1 Weir 580 ; 1 Weir 585 ; 1 Weir 614 ; 1 Weir 593 ; 1 Weir 615 ; 7 C. P. L. R. 20 ; Rat. Un. Cr. C. 474 ; 3 L. B. R. 266 ; 5 C. W. N. 293 ; 8 C. W. N. 291 ; 2 N. W. P. 436 ; 1928 Rang. 167.

Explanation 2.—This explanation is intended to include a company or an association or collection of persons as such with

tion. The offence is committed whether the words are spoken, written, printed or engraved, or in whatever manner the words, signs, or visible representations conveying the imputations, are expressed.—*Morgan and Macpherson.*

Scope—Mere assenting to a third party's report of what one had said may be defamation: 85 Ind. Cas. 361=26 Cr. L. J. 521=A. L. R. 1925 Mad. 320=47 M. L. J. 746. Defamatory statement made by a party to a civil proceeding is punishable. 16 S. L. R. 150=84 Ind. Cas. 111. A complaint of a Civil Court to see the Cr. P. Code =26 Cr. L. J. 941. has no absolute

tory statement whether an oath or otherwise, or contained in a plaint falls within s. 499 and is not absolutely privileged. 7 Pat. L. T. 587; 40 C. 433, 48 C. 388; see also 24 A. L. J. 329=92 Ind. Cas. 429=27 Cr. L. J. 253. Where a notice published in the newspaper contained an imputation that the complainant has been dishonest in the management of the affairs of a Company and was trying to conceal that dishonesty by

defamatory.
a person an
fame a new
Rang. 49.
his trade :

Cr. L. J. 1274. A. L. R. 1927 Bom. 54. Causing a person a dishonour, contempt and ridicule is an offence under s. 499 of Ind.

Imputation to a Hindu that he is an outcast is 'defamatory' and, is not covered by s. 95, A. L. R. 1928 A. 213; 111 Cr. L. J. 1111.

Harm the reputation.—In order to 'establish' the offence under this section, it is not necessary to prove that actual harm has been caused.

ed. It is sufficient to show that harm was intended to the complainant's reputation or that the accused person knew or had reason to believe that the imputations made by him would harm his reputation. 9 Ind. Cas. 775. If an imputation has no tendency to harm a person in his reputa-

Intention.—The essence of the offence is the intention or knowledge of the offender that the imputation may harm some person's reputation. Where no such intention or knowledge exists, the offence of defamation is not committed. The journeyman printer may be acquitted of defamation on the ground that in setting the types for printing defamatory matter and so aiding towards the circulation thereof, he had not the intention described in the definition, while the person who wrote the defamatory matter, for printing which the journeyman ignorantly set the types, may be convicted, because it may be clear that his purpose was to defame—*Morgan and Macpherson*, 442. It is not necessary to constitute an offence under this section that there should be evidence to show that the complainant has been injuriously affected by such alleged defamation. The law requires merely that there should be an intent and ill harm
"eir 575 ;

Where defamatory statement is made on a privileged occasion the complainant must show malice in fact. 7 C. W. N. 246 ; 11 C. W. N. 390.

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Explanation 2.—This explanation is intended to include company or an association or collection of persons as such with .1

word person as used in the definition so that the latter should not be limited to individuals. In a case in which the explanation is properly called into use the identity of the company or Association or collection to the imputation of intention of
29 C. W. N.

Explanation(4).—It will be the duty of the Judge in the trial of cases of defamation not to decide the question whether an imputation is

widely from one another in manners, tastes and religious opinions. That which can be proved or inferred by one from the opinion of society

opinion ought to be sufficiently flexible to those diversities.—*Morgan*
a Mahomedan had killed
his reputation, or lower
or his character in respect
thin the meaning of this
section. 5 C. F. L. R. 53. It must lower him in other people's estimation.
Anything which lowers him in his own estimation is not defamation.
7 A. 205 (F. B). It is defamatory to say without cause that any one

Mad. 397.

First exception.—To entitle a person to the benefit of this exception, the statements made must not only be proved to be true, but it must be shown that their publication was for the public good
9 Ind. Cas. 775. It is a good defence in criminal cases that the words complained of are in fact true, and that it was for the public benefit that the matters charged should be published, even though the actual motive of publication is malevolence. The defence of qualified
relatives extends to communications made by a person to a local

... good.
 ... words
 ... whom
 ... require-
 ments of the occasion. 8 Ind. Cas. 209. In order to come under this exception the imputation must be true and must be made for public good.—*Morgan and Macpherson*, 443. In all such cases the person who publishes such imputation renders a greater service to the public. But where the spreading of the true reports only hurts the feelings of an individual, without producing any compensating advantage to the public, certainly it is not protected under this exception. *Ibid*, 443. Where a matter is of public interest the Court might not to weigh any comment on it in a fine scale. 13 Bom. L. R. 1187 ; see also, 1 L. B. R. 139 ; 4 C. 124 ; 3 Bom. L. R. 188.

Second exception.—The public conduct of public functionaries is allowed to be discussed, provided that such discussion is conducted

... is or is not fit for his situation—whether a person who has hestirred
 ... of a public measure, ought to be
 ... public-spirited citizen or a foolish
 ... been tried for an offence was or
 was not guilty—when two witnesses who contradicted each other
 on a trial ought to be believed—whether a portrait is live—whether a
 song has been well sung—whether a book is well written—these are
 questions about which honest and discerning men may hold opinion
 diametrically opposite ; and to require a man to prove to the satisfaction
 of a court of law that the opinion which he has expressed on such a
 question is a right opinion, is to prohibit all discussion on such
 question.”—*Morgan and Macpherson*, 444.

Exception (3)—applies to public men who are not public functionaries. Persons who hold an office may yet take a very active part in urging or opposing the adoption of measures in which the community is deeply interested. Every person is allowed to comment in good faith on the proceedings of these volunteer servants of the public with the same freedom with which he is allowed to comment on the proceedings of the official servants of the public.—*Morgan and Macpherson*, 444. Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make a commentary a cloak for malice and slander. 1 B. H. C. App. 85. The word “malice” in the legal sense of the term, is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind, which is wrong or faulty (whether exercised in action by excess or defect), such as would be unjustifiable in the

circumstances, and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment, which is the subject of the complaint. 31 B. 293. It is impossible to justify allegation of defamation on the ground of fair comment, the moment it is shown that the allegation is based upon a mis-statement of facts. 98 Ind. Cas. 481 = 27 Cr. L. J. 1361 = A. I. R. 1927 All. 116.

Fifth exception.—All persons are allowed freely to discuss in parties, s. It is ht to be "m open ess their to the vast numbers who were absent, or if those who are allowed to know what has passed are not allowed to comment on what has passed."—*Morgan and Macpherson*, 443.

[illegible]

Eighth exception.—Two ingredients are essential to the establishing of the protection under exception 8; (1) that the accusation must be made to a person having authority over the party accused; (2) that it is made in good faith, that is to say, it is made in the interest of the public peace and justice of the community, and not for the purpose of exercising the right of the Magistrate to exercise, 6 A. 68; A defamatory accusation made to a Magistrate is not protected by this exception. Report to police

that a lost article was in the accused's house falls under this exception. 95 Ind. Cas. 480; see also 27 P. L. R. 171. Doctrine of absolute privilege does not apply in maffossil In India, A. I, R. 1928 Nag. 58.

Ninth exception.—Exceptions (1) and (9) codify those portions of the law of libel and slander treated in English text book or books under the heads of justification and qualified privilege. In order to be entitled to the benefit of the exceptions the accused must show that he in good faith made the imputation in self-defence or for public good. He must have acted with due care and caution, and the actual words used, the manner in which the words are published, the persons to whom they are communicated, must all be

son. 8 Ind. Cas. 209

apply *proprio vigore*

the Evidence Act, and

section. 13 Ind. Cas.

17 P. R. 1913. But

see 14 Ind. Cas. 659—36 M. 216; 4 Bur. L. J. 147; 97 Ind. Cas. 354. Reversioner making imputations against widow if directly interested is protected if the imputations are not disproportionate to the facts. 26 Cr. L. J. 428—85 Ind. Cas. 44—A. I. R. 1925 Mad 246. It is doubtful whether a complaint for defamation against a lawyer for matters uttered in Court in the course of his professional duties cannot be entertained. 50 M. 667—25 L. W. 295. Person claiming protection under this exception must prove good faith for protecting interest. 1929 All. 1.

A pleader is entitled to the presumption that the questions he asks for protection of the
that a question
no ground for
must be com-
improper motive

of his client in the cause. 41 C
19 B. 340; 36 C. 375; 35 M. 414
attaches to the profession of
members of the public. 18 C. W. N. 785—26 M. L. J. 621—12 A. L. J.
1042—16 Bom. L. R. 544—7 Bur. L. T. 167—41 C. 1023 P. C.

Vide 15 Cr. L. J. 281; Rat. Un. Cr. C. 387; 14 Bom. L. R. 585; 4 W. R. Cr. 22.

Witnesses are free from

circumstances, and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment, which is the subject of the complaint. 31 B. 293. It is impossible to justify allegation of defamation on the ground of fair comment, the moment it is shown that the allegation is based upon a mis-statement of facts. 98 Ind. Cas. 481=27 Cr. L. J. 1361=A. I. R. 1927 All. 116.

Fifth exception.—All persons are allowed freely to discuss in good faith the proceedings of courts of law, and the characters of parties, agents and witnesses, as connected with those proceedings. It is almost universally acknowledged that the courts of law ought to be thrown open to the public. But the advantage of throwing them open to the public will be small indeed, if the few who are able to press their way into a court are forbidden to report what has passed there to the vast numbers who were absent, or if those who are allowed to know what has passed are not allowed to comment on what has passed."—*Morgan and Macpherson*, 445.

Sixth Exception.—The object of this exception is that the public should be aided by comment, in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited, only on such evidence as is supplied by the public performance. It follows that an imputation on an author made by a critic, without reference, express or implied, to the work under criticism, in so terms so general as to be capable of conveying an unfavourable impression of him, apart from what appears in his work, cannot be justified by the critic, on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages thereon supporting the imputation. The responsibility of the critic is to be gauged by the effect, which his comment is calculated to produce, and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him. . . . words of the exception, . . . and to give the public . . . of anything but the

Eighth exception.—Two ingredients are essential to the establishing of the protection under exception 8; (1) that the accusation must be made to a person having authority over the party accused; and (2) that the accusation must be preferred in good faith, that is to say, with such reasonable care and attention on the part of the person making it, in first satisfying himself of the truth and justice of the charge, as an ordinary man should be expected to exercise. 6 A. 220=A. W. N. 1884, 53; see also 8 B. H. C. R. Cr. 168. A defamatory statement contained in a complaint filed before a Magistrate is not absolutely privileged. 46 M. 728=27 Cr. L. J. 1026. Report to police

that a lost article was in the accused's house falls under this exception. 95 Ind. Cas. 480; see also 27 P. L. R. 171. Doctrine of absolute privilege does not apply to moffussil in India. A. I. R. 1928 Nag. 58.

Ninth exception.—Exceptions (1) and (9) codify those portions of the law of libel and slander treated in English text book or books under the heads of justification and qualified privilege. In order to be entitled to the benefit of the exceptions the accused must show that he in good faith made the imputation in self-defence or for public good. He must have acted with due care and caution, and the actual words used, the manner in which the words are published, the persons to whom they are communicated, must all be taken into the account in the application of the exception. 8 Ind. Cas. 209.

... apply *proprio vigore*
... Evidence Act, and
... section. 13 Ind. Cas.
217. See also, 8 Ind. Cas. 220=11 Cr. L. J. 594; 317 P. R. 1913. But see 14 Ind. Cas. 659=36 M. 216; 4 Bur. L. J. 147; 97 Ind. Cas. 354. Reversioner making imputations against widow if directly interested is protected if the imputations are not disproportionate to the facts. 26 Cr. L. J. 428=85 Ind. Cas. 44=A. I. R. 1925 Mad 246. It is doubtful whether a complaint for defamation against a lawyer for matters alleged to

A pleader is entitled to the presumption that the questions he asks

Vide 15 Cr. L. J. 281; Rat. Ün. Cr. C. 387; 14 Bom. L. R. 585; 4 W. R. Cr. 22.

Witnesses are free from any other consequences, except that of indictment for perjury. 11 M. 477. Relevant statements made by witness on oath or solemn affirmation in a judicial proceeding are not lately protected from being made the subject of a prosecution for perjury by the proviso to section 133 of the Evidence Act in cases where witnesses have not objected to answering the questions put to

L. R. 1=50 B. 162=27 Cr. L. J. 423. The rule is the same as regards statements of the accused under s. 342 of the Criminal Procedure Code. 28 Bom. L. R. 1. A printer to escape liability on the ground of absence must prove that he was absent in good faith and show who was the printer in his absence. A. L. R. 1928 All. 400.

Punishment for defamation.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with

fine, or with both.

Cases.—4 B. 298 ; 9 B. 269 ; 4 W. R. Cr. 22 ; 15 B. 351 ; 1 Welr 609 ; 9 C. W. N. 195 ; 9 B. H. C. 451 ; 5 Bom. L. R. 122 ; 12 B. 167 ; 13 Cr. L. J. 488 ; 13 A. L. J. 681 ; 13 C. R. L. J. 489 ; 13 Ind. Cas. 494 ; 3 A. 664 ; 7 M. 36 ; 11 Bom. L. R. 638 ; 22 C. 46 ; 6 M. 381 ; 15 M. 214 ; 1 Welr 574 ; 19 B. 51 ; Rat. Un. Cr. C. 769 ; 15 B. 286 ; 24 Ind. Cas. 974 ; 28 Ind. Cas. 725 ; 5 C. P. L. R. Cr. 55 ; 3 A. 342 ; 6 A. L. J. 472 ; 29 B. 703 ; 1 C. W. N. 465 ; 2 N. W. P. 473 ; 9 Bom. L. R. 1287 ; 37 M. 210 ; 4 A. L. J. 605 ; 17 B. 127 ; 17 B. 573 ; 27 C. 262 ; 32 C. 756 ; 1 L. B. R. 84 ; 33 P. R. 1889 Cr. ; 14 P. R. 1893 Cr. ; 1 Welr 611 ; 6 M. L. T. 236 ; 19 M. L. J. 217 ; 8 Ind. Cas. 220 ; 30 M. 222 ; 16 M. 235 ; 49 Ind. Cas. 109 ; 41 A. 311 ; 40 A. 271 ; 43 Ind. Cas. 403 ; 45 Ind. Cas. 833 ; 20 Bnm. L. R. 601 ; 43 Ind. Cas. 417 ; 16 A. L. J. 498 ; 24 C. W. N. 982 ; 22 Bom. L. R. 1224 ; 45 M. L. J. 754 ; 4 Bur. L. J. 181 ; 6 Lah. 375 ; L. R. 6 All. 207 Cr. ; 94 Ind. Cas. 600 ; A. L. R. 926 All. 711 ; 24 A. L. J. 171 ; 92 Ind. Cas. 694 ; 54 C. 137 ; A. L. R. 1928 All. 321 ; A. L. R. 1928 P. 326 ; A. L. R. 1928 Lab. 865.

Procedure—Not cognizable—Warrant—Bailable—Compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of 1st class.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Procedure—Not cognizable—Warrant—Bailable—Compoundable—Triable by Court of Presidency Magistrate or Magistrate of 1st class.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment, for a term which may extend to two years, or with fine, or with both.

Procedure—Not cognizable—Warrant—Bailable—Compoundable—
 Triable by Court of Presidency Magistrate or Magistrate of 1st class.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Chapter XXII.—This Chapter is in some sort supplementary to the Chapter of Defamation. An imputation which is not defamatory under the definition, explanations and exceptions to that Chapter may, under certain circumstances, be actionable on other grounds. For example, an imputation, though not defamatory, may be actionable if it is made with intent to injure the public peace. If so, it is actionable on other grounds. In many cases in which it is actionable on other grounds, it is also actionable on the ground of affecting an individual. But there is no case in which it is desirable that such truth should be told so such a way that the telling of it is gross personal outrage. A person who has detected or detects that he has detected, a dishonest misrepresentation in a book, has a right to expose it publicly. But he cannot be allowed to intrude into the presence of the author of the book, and to tell him to his face that he is a liar. A person who knows the mistress of a female school to be a woman of infamous character, deserves well of society if he states what he knows. But he cannot be allowed to follow her through the streets calling her by opprobrious names though he may be able to prove that all those names were meant

person who brings to notice the malversation of a public functionary deserves applause. But a person who hangs a public functionary in effigy at that functionary's door with an accusatory label, does what the label, and every one may be perfectly

Scope.—Where the threats are intended to put a person in fear and thereby to dishonestly induce a person to deliver property, they may amount to offences punishable under sections 385 or 389. Such threats as the following would fall within the present definition.—Threats to a person or to his child, wife, relatives etc.—Threats to cause mischief on property or to kill or wound any animal which is property, or to commit the offence of house-breaking, or to commit any mischief or trespass by means of a riotous or unlawful assembly, threats to impute unnatural lust to a person, etc.

The threat must be made either with intent to cause alarm to the person threatened or to omit to do something. The question whether it does or not depends on the nature of the threat, if it is made with the intention mentioned in the section, it is an offence. A threat of a trivial kind, calculated perhaps to give pain, but not to cause alarm, will probably be deemed to fall within the exception in section 95. If the intention of the person threatening is to cause the person threatened to do an act which he is bound to do, such as to pay a just debt or demand, it may nevertheless amount to criminal intimidation if the intention is to cause alarm to that person by a threat of injury.—*Morgan and Macpherson*, 450. In order to constitute the offence of criminal intimidation, the harm threatened must be illegal. U. B. R. (1892-1901) Vol. I. p. 359. A threat will not amount to an offence, unless made with intent to cause alarm to the complainant. 2 Bom. L. R. 55. There can be no criminal intimidation where the injury of which complaint is made is the hardship

communicated to the person threatened for the purpose of influencing the man's mind. 15 C. 671. There must be a threat to another person

of injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. 30 C. 418=7 C. W. N. 116. Where a Municipal Commissioner threatened a person that if he bought a cow, it would be impossible for him to do so. It was held that the words did not amount to an insult.

102 Ind. Cas. 557=28 Cr. L. J. 589=8 A. I. R. Cr. R. 148.

Cases.—Rat. Un. Cr. C. 273 ; S. C. 146 Oudh ; 11 B. 376 ; Rat. Un. Cr. C. 186 ; 8 B. H. C. R. Cr. 101 ; 5 C. P. L. R. Cr. 59 ; 8 M. 140 ; 109 P. R. 1866 Cr. ; Rat. Un. Cr. C. 37 ; 21 A. L. J. 877.

504 Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Scope.—The insult, however deliberate and intentional, are only punishable as offences when they are intended to provoke a breach of the public peace.

1 Weir 622. To charge a person with an offence is sufficient. U. B. R. (1892—1896) Vol. I, 290. It is sufficient for the prosecution to prove that the abusive language used is ordinarily sufficient to provoke a man of his position and character to commit a breach of the peace. 1 Weir 620 ; U. B. R. (1897—1901) Vol. I, 67. The essence of the offence consists in the effect which it is likely to produce upon the person to whom the provocation is addressed, not upon any other person who may come to know it. U. B. R. (1897—1901) Vol. I, 360. In an offence under this section fine should be imposed. 11 Ind. Cas. 619. See 2 Pat. L. T. 482 ; 65 Ind. Cas. 635 ; 7 A. L. J. 124 ; 45 Ind. Cas. 1002 ; 18 A. L. J. 515. When a person pulls a Mahomedan by his beard in a public place he intends to insult him and is guilty of an offence under this section. 23 A. L. J. Ind. Cas. 79=26 Cr. L. J. 203. When the failure of a person to specifically mention the objectionable words in the charge has caused prejudice to the accused, the conviction is not bad. 104 Ind. C.

28 Cr. L. J. 821=A. I. R. 1927 Lab. 702. A person comes within the ambit of s. 504, if the provocation offered by him is of such a character as to cause the person provoked to commit any other offence. The provocation need not be likely to cause a breach of the peace. 99 Ind. Cas. 604=28 Cr. L. J. 172.

Procedure.—Not cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate.

Statements condoning public mischief. 505. Whoever makes, publishes, or circulates any statement, rumour, or report,—

- (a) with intent to cause, or which is likely to cause, any offence, soldier, or sailor in the army or navy of Her Majesty, or in the Royal Indian Marine, or in the Imperial Service Troops, to mutiny, or otherwise, disregard or fail in his duty as such; or
- (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity; or
- (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing, or circulating any such statement, rumour, or report, has reasonable grounds for believing that such statement, rumour, or report is true, and makes, publishes, or circulates it without any such intent as aforesaid.

Legislative Notes.—This section has been substituted by Act 4 of 1898.

Scope.—The statement, rumour or report, whether it is circulated or made public by words, by writings or by signals or otherwise, if it is known by the person who publishes it to be false and if it is intended to cause mutiny. (See Chapter VII of Act relating to the Army and Air Force, 1922.) It is also punishable if it is intended to cause fear or alarm to the public, or to any class of the public, or to induce any offence within the sixth or eighth chapter of this Code.—*Morgan and Macpherson*, 451. The mere causing of fear or alarm to the public or to a section of the public does not constitute an

28 Cr. L. J. 821=A. I. R. 1927 Lah. 702. A person comes within the ambit of s. 504, if the provocation offered by him is of such a character as to cause the person provoked to commit any other offence. The provocation need not be likely to cause a breach of the peace. 99 Ind. Cas. 604=28 Cr. L. J. 172.

Procedure.—Not-cognizable—Warrant—Bailable—Compoundable—Triable by any Magistrate.

Statements conducing to public mischief. 505. Whoever makes, publishes, or circulates any statement, rumour, or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, or sailor in the army or navy of Her Majesty, or in the Royal Indian Marine, or in the Imperial Service Troops, to mutiny, or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing, or circulating any such statement, rumour, or report, has reasonable grounds for believing that such statement, rumour, or report is true, and makes, publishes, or circulates it without any such intent as aforesaid.

Legislative Notes.—This section has been substituted by Act 4 of 1898.

Scope.—The statement, rumour or report, whether it is circulated or made public by words, by writings or by signals or otherwise, if it is known by the person who publishes it to be false and if it is intended to cause mutiny (See Chapter VII of offences relating to the Army and Navy) is punishable as an offence under this section. It is also punishable if it is intended to cause fear or alarm to the public, or to any class of the public, or any community (See Section 12) and thereby to induce any person to commit any offence within the sixth or eighth chapter of this Code.—*Morgan and Macpherson*, 451. The mere causing of fear or alarm to the public or to a section of the public does not constitute an

offence under this section ; but it is necessary that the fear or alarm should be caused in such circumstances as to render it likely that a person may be induced to commit an offence against the state or against the public tranquillity. Account cannot be taken of a vague possibility that the state of mind which is caused by alarm may easily induce a person to commit an offence against the public tranquillity. 3 C. W. N. 1.

Procedure.—Not-cognizable—Warrant—Not bailable—Not compoundable—Triable by Presidency Magistrate or Magistrate of 1st or 2nd class.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause death or grievous hurt, or to cause any offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Scope.—If the criminal intimidation is aggravated by a threat of injury of the kind here mentioned, an increased punishment may be awarded. The offences which are punishable with death or transportation, or with imprisonment for seven years, are mentioned in different sections—*Morgan and Macpherson, 452*. To constitute an offence under this section, it must be shown that the person charged actually threatened

bringing a false charge against a person and to support it by fabricating false evidence is criminal intimidation. 1 Weir, 623.

Cases.—A. W. N. 1886, 41 ; 1 Weir, 622 ; 1 Weir, 623 ; 2 A. 351 ; Rat. Un. Cr. C. 850 ; Rat. Un. Cr. C. 330 ; 4 B. H. C. Cr. 12 ; 2 Pat. L. T. 596.

Procedure.—Not-cognizable—Warrant—Bailable—Compoundable—Triable by Presidency Magistrate or Magistrate of the 1st or 2nd class. If the threat be to cause death or grievous hurt, etc.,—Not-cognizable—Warrant—Bailable—Not-compoundable—Triable by Court of Session. Presidency Magistrate or Magistrate of 1st class.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Scope—If the criminal intimidation is by an anonymous letter, or by a letter signed with a false name, and the letter is dropped on a road or is intended to be put in a place where it is likely to be seen and read by the person for whom it is intended, or to be found by some other person who it is expected will forward it to the person for whom it is intended, the offence will be subject to punishment under this section, — *Morgan and Macpherson, 452.* The punishment provided in this section cannot be awarded until there has been a conviction under s. 506. 99 P. R. 1886, Cr.

Procedure—Not cognizable—Warrant—bailable—Not compoundable—Triable by Court of Session.

508 Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do,

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(a) A slits dharmas at Z's door with the intention of causing it to be the displeasure.

... act, A will kill ... killing would ... A has com-

Scope.—Where the accused voluntarily attempts to cause a person to omit to do what he is legally entitled to do, by attempting to induce the latter to believe that he would otherwise be rendered by an act of the

accused an object of divine displeasure, the accused commits an offence under this section. Rat. Un. Cr. C. 376. The words of this section seem to imply that the threat must be one which can be put into execution by the person threatening. 48 M. 774=86 Ind. Cas. 339=26 Cr. L. J. 755. To constitute an offence under this section, it must be shown that the person accused of such offence threatened to do a future act or "act" to omit to do a past act, and that his act should be intended.

6 M. 301, see also A. v. N. 1000, 63.

Procedure.—Not cognizable—Warrant—Bailable—Compoundable with Court's permission—Triable by Presidency Magistrate or Magistrate of the first class.

509. Whoever, intending to insult the modesty of any woman, Word, gesture, or act utters any word, makes any sound or gesture, intended to insult the or exhibits any object, intending that such modesty of a woman. word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Scope.—A, intending to outrage the modesty of a woman, exposes
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 A has committed
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 *Macpherson*, 453.
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Intrusion upon the privacy of a woman, an offence under this section, the intruder must be intending to insult the modesty of such woman. 6 P. R. 1892 Cr. ; 86 Ind. Cas. 968. An offence under this section is made out when the accused writes a letter to the complainant containing indecent overtures. 28 Bom. L. R. 90=93 Ind. Cas. 247=27 Cr. L. J. 455=50 B. 246. In order to justify conviction under this section the modesty of some particular woman must have been outraged. 19 S. L. R. 87

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in Misconduct in public by a drunken person. him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Scope—Mere intoxication is not made punishable. But if a person appears in a public place, as to a street, in a public assembly, to a railway cartage, etc., in a state of intoxication, or if in such a state, he intrudes into a private house or into any other place, where he has not a right to go, and thereby (it may be unintentionally), causes annoyance, he commits the offence here made punishable. A person whether drunk or sober who trespasses on property with intent to insult or annoy any person in possession of such property, commits "criminal trespass" and may be punished for that offence (see sections 441, 447).—*Morgan and Macpherson*, 454.

Procedure.—Not cognizable—Warrant—Bailable—Not compoundable—Triable by any Magistrate.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a) A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

Application.—This chapter applies to offences punishable under ss. 121 A, 294 A and 304 A—Vide Act 27 of 1870 s. 13.

Illustrations. The illustrations above given are cases of attempts in

well include act less near to the consummation of the offence than those just mentioned. But these words must not, it seems, be construed to include all acts however remote which tend towards the commission of the offence. The thing done may be too small or, it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt. The following are illustrations of this (see section 307)—

A, intending to murder Z, buys a gun for the purpose of loading it and firing at Z.

A, intending to murder Z by poison, purchases poison and has it in his possession,

A intending to commit a murder, is seen to walk towards the place of the contemplated murder,

Such acts are in themselves ambiguous, and are not so immediately connected with the offence as to make the doers punishable under this section.

It is impossible to lay down a clear rule on such a subject, or to define what is such an act done in furtherance of a criminal intent as will constitute an attempt. As has been said, acts remotely tending towards the commission of an offence are not, it seems, sufficient to bring a case within this section. On the other hand acts immediately and necessarily connected with the commission of the offence, and which constitute a commencement of execution of the offence, not being completed only because the offender is hindered by circumstances independent of his will, as by seizure by the police, etc., are attempts.

cessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible, of which the law can take hold

as an act showing progress towards the actual commission of the offence. It does not matter that the purpose was interrupted. 103 Ind. Cas. 408=28 Cr. L. J. 680. An attempt to commit an offence is punishable under this section though the final act short of actual commission of that offence has not been accomplished. A. I. R. 1928 Lah. 531.

A person cannot be convicted of attempting to commit an offence, unless the offence would have been committed had the attempt proved successful. 22 C. 131. An attempt is an intentional preparatory action

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Scope.—This section does not relate only to the penultimate act, but to all preceding acts if they were done with intent to commit or facilitate the commission of the act. 25 B. 90=2 Bom. L. R. 653; 15A 178.

Preparation.—Between the preparation for the attempt and the attempt itself, there is a wide difference. The preparation consists in devising or arranging means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commis-

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and an attempt are distinct ; if the actual transaction has commenced and would have ended in a crime, if not interrupted, there is an attempt, 18 P. R. 1868 Cr. Preparation consists in devising means necessary for the commission of the offence. 65 Ind. Cas. 492. See also 1923 P. 307.

Or to cause such an offence to be committed—A common form of attempt is the soliciting of another to commit an offence—as to incite a servant to steal his master's goods—to incite a person to commit

will not affect the offence though the person solicited declines the persuasion. Attempts of this description will ordinarily amount to offences punishable under the chapter of abetment—*Morgan and Macpherson*, 457.

For a term, etc—In calculating this term where transportation for life is a punishment provided for the offence which has been attempted, such transportation must be reckoned as equivalent to transportation for twenty years (see section 57). The Court may impose fine equal in amount to the fine provided for the offence, but where no sum is expressed to which the fine may extend, the amount must not be excessive—*Morgan and Macpherson*, 457.

Section 75.—Section 75 does not apply to cases which are confined to this section. The offences, which come under this section must be punished entirely irrespective of s 75 17A. 123. See also 21 W. R. 35 Cr.

Attempt to abet.—It is not legally impossible to attempt the abetment of an offence, which is provided for in s. 511. There is, therefore, no legal obstacle to punish such an offence. 49 P. R. 1887 Cr. ; See also 24 P. R. 1885 Cr.

Section 307—This section was not intended to exhaust all attempts to commit murder which could be punishable under the Code, but applies only to acts done which are capable of causing death in the natural and ordinary course of things, if the act took effect. In considering, however, an attempt under this section, it is necessary to see whether the causing of death was possible or not, if the act was completed 4 B. H. C. 17.

Cases—24 B 287, 12 C L. R. Cr 1, 3 B L. R. A. C. 55, 9 C. P. L. R. 14 Cr, 6 P. R. 1868 Cr, 1 A 316, Rat Un Cr C 865; 13 P. R. 1879 Cr, 25 P R; 1902 Cr, 8 A. 303, 16 C 110, 13 P. R. 1881 Cr., 4 N W P. 133, 27 P R 1872 Cr; 16 A. 409, 20 A. 143; 40 P. R. 1885 Cr., 2 L B. R. 310, 7 W R. Cr. 48, A. W. N. 1886, 290; 22 P. R. 1878 Cr.; 45 P R. 1882 Cr.; 9 Cr L J 5, 30 P. R. 1904 Cr 32 P R 1866 Cr., 16 C 370, 39 C. 522; 15 Bom. L. R. 564; 8 C. N. 278; 5 B. 140; 17 A. 120; 3 W. R. Cr. 59, L. B. R. (1893—

496 ; 2 Bom. L. R. 304 ; Rat. Un. Cr. C. 622 ; 9 C. L. J. 432 ; Rat. Un. Cr. C. 966 ; 15 P. R. 1907 Cr. ; 18 C. 484 ; U. B. R. (1892—1896) Vol. I, 191 ; 8 Bom. L. R. 855 ; 12 P. R. 1906 ; 13 Cr. L. J. 864 (F. B.) ; 18 P. R. 1879 Cr. ; 24 P. R. 1914 Cr. ; 15 Bom. L. R. 568 ; 299 P. L. R. 1913 ; 25 M. 726 ; 17 C. W. N. 294 ; 42 P. W. R. 1910 Cr. , 5 B. 403 ; 24 P. R. 1882 ; Rat. Un. Cr. C. 123 ; L. B. R. (1872—1892), 399 ; 3 B. H. C. Cr. 37 ; 1 Weir 569 ; 2 Cr. L. J. 788 , 12 C. W. N. 750 ; Rat. Un. Cr. C. 470 ; 9 C. W. N. 764 , 1 L. B. R. 221 ; 11 B. 376 , 12 Bom. L. R. 21 ; 3 L. B. R. 30 ; 10 P. R. Cr. 1907 ; 2 A. 253 , 15 B. 194 ; 4 L. B. R. 311 (F. B.) ; 14 A. 38 ; Rat. Un. Cr. C. 188 ; 14 Bom. L. R. 146 ; 8 M. 5 ; U. B. R. (1897—1901) Vol. I. 325 , 47 Ind. Cas. 77 ; 51 M. L. J. 800 , A. I. R. 1926 Lah. 147.

Procedure—Cognizable or not—Warrant or the summons—Bailable or not—Compoundable or not—as in the offence attempted Triable by the court by which the offence attempted is triable. If punishable with death, transportation or imprisonment for 7 years or upwards—cognizable—Warrant—Not bailable—Not compoundable—Triable by Court of Session. If punishable with imprisonment for 3 years and upwards, but less than 7 years—Cognizable—Warrant—Not bailable (except in cases under the Indian Arms Act, section 19, which shall be bailable)—Not compoundable—Triable by Court of Session, Presidency Magistrate or Magistrate of the 1st class. If punishable with imprisonment for one

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ACT V. OF 1898.



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THE
CODE OF CRIMINAL PROCEDURE,
1898.

ACT NO. V OF 1898*

[22nd March, 1898.]

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING
TO CRIMINAL PROCEDURE.

Whereas it is expedient to consolidate and amend the law relating to Criminal Procedure ;

It is hereby enacted as follows —

Object of the Code.—The object of the Code is to provide a machinery for the punishment of offenders against the Criminal Law. 13 B 590 (F. B) ; 16 B. 580 ; 43 M L. J. 710 ; 12 C. 536.

PART I

PRELIMINARY.

CHAPTER I.

Short title, Commencement,

1. (1) This Act may be called the Court of Criminal Procedure, 1898 ; and it shall come into force on the first day of July 1898.

* For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V. p. 363 ; for Report of the Select Committee, see *ibid*, 1898, Pt. V. p. 19, and for Proceedings in Council, see *ibid*, 1897. pt. VI, pp. 238 and 254 ; and *ibid*, 1898, pp. 22, 101 and 175.

This Act has been declared, under s. 3 of the Santhal Parganas

(2) It extends to the whole of British India, but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or

It has been declared in force in Upper Burma (except the Shan States), as to which see further subject to certain modifications by the Burma Laws Act, 1898 (XIII of 1898), as to the modifications see the Upper Burma Criminal Justice Regulation, 1892 (V of 1892), as amended by Act XIII of 1898.

It has been declared in force in Arakan Hill District, by s. 2 of the Arakan Hill District Laws Regulation, 1916 (I of 1916).

It has been declared in force in the Chittagong Hill-tracts (with a reservation as to cases tried by certain persons) by s. 4 of the Chittagong Hill tracts Regulation, 1900 (I of 1900).

"It has been declared in force in British Baluchistan by s. 3 of the British Baluchistan Laws Regulation, 1913 (II of 1913).

It has ceased to be in force, by notification under s. 2 of the Assam Frontier Tracts Regulation, 1880 (II of 1880), in the following places, namely:—

The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the Mhar District, the Mikir District, the Dibrugarh Frontier District and the Lushai Hills—see

the Sindh Frontier Regulation, 1894 (I of 1894) s. 11, and the Sindh Islands, see Regulation III of 1876, s. 13 as amended by Regulation I of 1884, s. 3.

It has been declared in force, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), in the Scheduled Districts of George Gazette, 1898, Pt. I, s. 869; and by notification in the following other Scheduled

(now the Ranchi District—see Gazette of India, 1899, Pt. I, p. 419. The powers of the Local Government were at the same time conferred on the Agent-Collector of Central India, and also the Code.

Central States Laws and Regulation No. 29, dated

Court might continue to exercise appellate and revisional powers over that district. 26 C. 874=3 C. W. N. 564.

Special law.—This expression refers to statutory enactment and not to local family law. 37 M. L. J. 361. But prosecution under Calcutta Municipal Act is to be proceeded under this Code. 31 C. W. N. 503=45 C. L. J. 469.

Local law.—This Code has no application in a prosecution under Local law. *Vide* 12 C. 536 ; 12 Cr. L. J. 568 ; 31 C. 557.

2. [Repeal of enactments, notifications, etc., under the repealed Acts. Pending cases.] Repealed by the Repealing and Amending Act, 1914 (X of 1914).

Notes.—The repeal of a statute which repealed another statute does not revive the latter statute. 2 C. W. N. 11 ; 25 C. W. N. 333. The law relating to procedure has no retrospective effect. 2 B. 148 ; 2 C. 225 ; 20 M. 481 ; 25 C. 333 ; 3 Bom. L. R. 584.

3. (1) In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act XXV of 1861 or Act X of 1872, or Act X of 1882, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

(2) In every enactment passed before this Code comes into force, the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression, "Magistrate of a division of a district" shall be deemed to mean "Subdivisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate;" and the expression "Joint Sessions Judge" shall mean "Additional Sessions Judge."

Notes.—*Vide* 12 M. 94 (F. B.)=1 Weir 875 ; 25 C. 637.

4. (1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context :—

(a) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or "Advocate General," Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf :

(b) "bailable offence" means an offence shewn as bailable in the second schedule, or which is made "Bailable offence," bailable by any other law for the time being in force ; and "non-bailable offence," means "Non-bailable offence," any other offence

(c) "charge" includes any head of charge "Charge," when the charge contains more heads than one ; *

(e) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge "Clerk of the Crown," the functions given by this Code to the Clerk of the Crown ;

(f) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule "Cognizable offence," "Cognizable case," or under any law for the time being in force, arrest without warrant :

(g) "Commissioner of Police" includes "Commissioner of Police," a Deputy Commissioner of Police :

(h) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some "Complaint," person, whether known or unknown, has committed an offence, but it does not include the report of a police officer :

"European British subject." †(i) "European British subject" means—

(i) any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or any Colony, or

* Clause (d) was repealed by s. 3 and Sch II of the R., Amending Act, 1923 (XI of 1923)

† This clause was substituted by s. 2(1) of the Criminal Law Amendment Act, 1923 (XII of 1923).

(ii) any subject of His Majesty who is the child or grand-child of any such person by legitimate descent :]

(j) "High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras* Bombay,† [Allahabad† Panta]§ [Lahore] [and Rangoon] the Chief Courts of Oudh and Sind** ††[and the Court of the Judicial Commissioners of the Central Provinces;††]. in other cases "High Court" means the highest Court of criminal appeal or revision for any local area ; or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf:§§

* The word "and" was omitted by s. 2 and Schedule 1 of the Amending Act, 1916 (XIII of 1916).

† These words were substituted for the words "the High Court of Judicature for the North Western Provinces," by *ibid*.

‡ The word "and" was omitted by the Repealing and Amending Act 1910 (XVIII of 1919)

§ The words "and Lahore" were substituted for the words "the Chief Court of the Punjab" by *ibid*.

|| The word "and" was omitted by s. 2 and Sch. 1 of the Repealing and Amending Act, 1923 (XI of 1923)

¶ These words were substituted for the words "the Chief Court of Lower Burma" by *ibid*

the Criminal Law Amendment Act 1926.

or Burma Criminal Justice as amended by the Burma Parganas, see the Santhal J., s 4, as amended by the on, 1899 (III of 1899), (3)

Ajmere-Merwara, see s. 38 of the Ajmere Courts Regulation, 1877 (I of 1877), (4) Coorg, see s. 16 of the Coorg Courts Regulation, 1901 (I of 1901), (5) Oudh, see the Oudh Courts Act, 1891 (XIV of 1891), as amended by Act XVI of 1897, (6) the North West Frontier Province, see s. 6 (1) (c) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901), Baluchistan, see art 6 (1) (ii) of the Schedule to the British Baluchistan Criminal Justice Regulation, 1896 (VIII of 1896) — Vide Govt. Edition p. 32.

(k) "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court ;
 "Inquiry."

(l) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf :
 "Investigation."

(m) "judicial proceeding" includes proceeding in the course of which evidence is or may be legally taken on oath ;
 "Judicial proceeding"

(n) "non-cognizable offence" means an offence for, and "non cognizable case" means a case in, which a police-officer, within or without a presidency-town, may not arrest without warrant .
 Non-cognizable offence ; "Non-cognizable case"

(o) "offence" means any act or omission made punishable by any law for the time being in force ;
 "Offence."

it also includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 .

(p) "officer in charge of a police-station" * includes, when the officer in charge of the police-station is absent from the station house or unable from illness or other cause to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the Local Government so directs, any other police-officer so present :
 Officer in charge of a police-station."

(q) "place" includes also a house, building, tent and vessel :
 "Place"

* Cf. the Upper Burma Criminal Justice Regulation, 1892 (V of 1892) Schedule, arts. 6 and 7.

- (r) "pleader," used with reference to any proceeding in any Court, means a pleader *{or a mukhtear} authorized under any law† for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any‡ other person appointed with the permission of the Court to act in such proceeding :
- "Pleader,"
- (s) "police-station" means any post or place declared, generally or specially, by the Local Government to be a police-station, and includes any local area specified by the Local Government in this behalf ;
- "Police station "
- (t) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction :
- "Public Prosecutor."
- (u) "sub-division" means a sub-division of a district .
- "Sub-division."
- (v) "summons-case" means a case relating to an offence, and not being a warrant-case : and
- "Summons case."
- (w) "warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months.
- "Warrant case."
- (z) Words which refer to acts done, extend also to illegal omissions ; and
- Words referring to acts.

* These words were inserted by s. 2 of the Code of Criminal Pro-

46) ; the Legal
 1879
 of 1884) ; and
).
 he Code of Cri-
 of 1923).

all words and expressions used herein and defined in the Indian Penal Code, and hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Scope.—The function of a Court of law in interpreting a statute is not to make the law reasonable, but to expound it as it stands. *Walter John Brooks v. Nee Barwik*, 9, Ind. Cas. 99—A. L. R. 1926 (Sind) 58 (F.B.).

Clause (c)—Vide 8 B. 200; 9 S. L. R. 37=30 Ind. Cas. 125.

Clause (f)—The expression "police officer" in this clause does not mean any police officer, 27 C 144. The power of arrest referred to in this clause means an unqualified power, 24 C. 691.

Clause (h)—The definition of 'complaint' is very wide. 10 C. W. N. 158; 33 C 1; 4 C. W. N. 221N; 14 C. 707, 18 Cr. L. J. 754; 5 C. W. N. 10. A police report is a complaint, 1 L. B. R. 58. A petition sent by post to a District Magistrate informing him of an offence is not a complaint, A. W. N. 1899. 201; but see 81 Ind. Cas. 971. A statement to a Magistrate that a person keeps a gaming house is not a complaint, 8 S. L. R. 66=15 Cr. L. J. 657=25 Ind. Cas. 98. An order passed by a Judge may be a complaint, 12 A. L. J. 881=15 Cr. L. J. 700=26 Ind. Cas. 148. See also 18 A. L. J. 50.

The presentation of a petition by the complainant that his complaint should be enquired into is in effect a complaint, 5 C. W. N. 106. The report of a peon that the accused has obstructed him is not a complaint, 17 C. W. N. 930=20 Ind. Cas. 622=14 Cr. L. J. 462. The complaint need not mention the section under which an accused is to be charged. All that is required is that the facts stated in the petition must disclose a substantive offence, 93 Ind. Cas. 69=1926 All. 358, 26 P. L. R. 552=1925 Lah. 631.

The report of a peon that the accused has committed an offence is a complaint, 52 C. 371=100 Ind. Cas. 100. A complaint of an Union may complain by a person, 10 C. W. N. 10. A petition against a Tasildar addressed to a Collector, alleging that that Tasildar has committed an offence under the Indian Penal Code is a complaint, 20 Ind. Cas. 409=11 A. L. J. 529=14 Cr. L. J. 425. In filing a complaint in a Criminal Court it is not necessary that the complainant should name all the accused persons, 13 Cr. L. J. 588=15 Ind. Cas. 1004. An endorsement of a Superintendent of Police on a report of a Circle Inspector to him is not a complaint, 27 Cr. L. J. 809=A. L. R. 1926. All 566. An allegation that an offence has been committed together with an accusation to summon his witnesses is a complaint, 35 C. 141=11 P. L. J. 753. A complaint may be made by a police officer, if it be made in the District Magistrate, 25 Cr. L. J. 1361=1925 Lah. 237=82 P. L. R. 753. Any person who is aware of the commission of an

generally may make a complaint. 41 C. 1013; 13 B. 600; 25 C. W. N. 357; 20 C. 281; 21 B. 536; 10 C. L. J. 18; 1 B. 175.

An information by a police officer empowered to lay an information under s. 51 of the Bombay District Police Act is a complaint. 6 S. L. R. 82=17 Ind. Cas. 6=13 Cr. L. J. 752. A petition of objection against a police report asking a Magistrate to make an investigation may be considered as a complaint 3 P. L. J. 346, 10 C. W. N. 151=33 C. 1. So also a report of a trying Magistrate to the District Magistrate 81 Ind. Cas. 595=25 Cr. L. J. 947. A District Magistrate cannot authorise the Public Prosecutor to file a complaint on his behalf. 16 Cr. L. J. 251=28 Ind. Cas. 107=13 P. R. 1915 Cr.=20 P. W. R. 1915 Cr. By a complaint the machinery of the Court is set in motion but the real prosecutor in every criminal case is the Crown. 12 C. W. N. 750=7 C. L. J. 375=7 Cr. L. J. 342. A report by a civil or revenue officer to the Magistrate for taking action either under s. 193 I. P. C., s. 447 I. P. C. or under s. 476 of Cr. Procedure Code is a complaint. Vide 26 A. 514; 30 P. R. 1295; 8 P. R. 1884; 13 B. 109; 53 Ind. Cas. 610; 4 A. L. J. 803; 7 A. 87 (FB); 32 M. 49; 23 A. 249; 32 B. 189; 15 B. 109; 26 M. 98. The report of a police officer in a non-cognizable case is a complaint. 32 M. 3; 6 S. L. R. 82; 23 C. W. N. 481; 84 Ind. Cas. 753; 25 Cr. L. J. 1361; 11 A. L. J. 332; 29 Bom. L. R. 742; 54 C. 371; but

p. 12 where he observes :—
: was treated either as a complaint under s. 19 (1) (b). But now include any report whether in reference the term 'complaint' or section 173 Cr. Procedure

Code is a complaint. 17 C. W. N. 824; 26 B. 158; 40 C. 360; 14 C. 707; 38 C. 68. A petition under section 488 of the Criminal Procedure Code is not a complaint. 18 B. 468; 1905 P. B. 29; 1885 P. R. 13; 16 C. 781; 11 M. 199. So also a petition under ss. 107, 110 or 145 Cr. Pro. Code. 27 C. 662; 42 P. R. 1905; 20 C. 729; 6 C. W. N. 163; A. W. N. 1900, 206; 81 Ind. Cas. 973; 76 Ind. Cas. 25. A petition in which the warning of a particular person is prayed for is not a complaint. 15 C. W. N. 1051; lodging information at a *Thana* or to a Court-Inspector does not amount to a complaint 30 C. 910; 30 C. 285; 76 Ind. Cas. 25. An application to a Deputy Commissioner is not a complaint. 75 Ind. Cas. 543=1924 Nag. 115; but see 13 N. L. R. 13. A report of a Circle Inspector to the Superintendent of police cannot be considered a complaint. 96 Ind. Cas. 211.

Clause (1)—The present amendment has narrowed the definition. *Vide Statement of Objects and Reasons* Where a prisoner pleaded that he was a British-born subject and that he ought, therefore to be tried before the High Court, and where the evidence showed that the prisoner was the legitimate grand-son of a person said to have been a serjeant in the service of the King or of the East India Company, and there was no sufficient evidence to establish a valid marriage between that grand-father and a native Christian woman, through whom the

prisoner traced his descent, and there were also doubts about the nationality of the said grand-father, *held*, that there was no evidence to show that the prisoner was a British-born subject 2 Weir 11=6 M. H. C. R. 7. A man is not an European British subject by his birth in Europe. 14 Ind. Cas 197 ; 6 P. R. 1912 Cr. A prisoner can waive his right to be tried as an European British subject *Vide* 11 Ind. Cas. 620 ; 14 Ind Cas 197. After waiver the right cannot be claimed again 76 Ind Cas. 695=45 M. L. J. 800.

Clause (j).—Before the amendment by Act XII of 1923 the Courts of the Judicial Commissioner of Sind and Nagpur were ousted from exercising revisional jurisdiction when the prisoner claimed to be tried as an European British subject. 12 B. 561, 7 N. L. R. 93=11 Ind. Cas 620=12 Cr. L. J. 436. Under the present law, such revisional jurisdiction can be exercised by the Judicial Commissioner of Nagpur, see also 91 Ind. Cas 99—A. I. R. 1926 Sind 38 (F. B.). The High Court exercising original criminal jurisdiction is not a Court of Session within the meaning of this section. 51 C. 980=29 C. W. N. 384=84 Ind. Cas. 929=26 Cr. L. J. 385. The High Court of Patna has only to deal with appeals under s. 417 against an order of acquittal. It has no power to deal with an application under s. 439 for setting aside acquittal for which the proper forum is the Commissioner of Bhagalpur. A. I. R. 1926 Pat. 449

Clause (k).—An investigation in a case under S. 145 is an enquiry, 28 C. 709=5 C. W. N. 749, 13 C. W. N. 420=9 Cr. L. J. 278=1 Ind. Cas. 336. But this section is not exhaustive 46 C. 854 ; 38 C. 68. A preliminary enquiry is an enquiry 32 M. 218 ; see also 1897 P. R. 3 ; see also 45 A. 700=21 A. L. J. 619. As regards the meaning of the expression "trial" *vide* 27 M. 510 ; 25 C. 863 ; 32 M. 320 ; 15 C. 608 ; 3 C. 754. A proceeding under s. 107 Cr. Pro. Code is a trial. 45 M. 511 (F. B.) ; 27 M. 510

Clause (l).—The definition of the term 'investigation' is not exhaustive. 4 Bom. L. R. 271=26 B. 533 ; see also 46 C. 854.

Clause (m).—An enquiry conducted by a Magistrate into the truth of allegations against a subordinate official, contained in a petition presented to a Deputy Commissioner is a judicial proceeding. 28 A. 89=2 A. L. J. 717=2 Cr. L. J. 454. Proceedings in execution are judicial proceedings. 10 N. L. R. 177 ; see also 1 P. R. 1910 Cr.=161 P. L. R. 910=5 Ind. Cas. 257=11 Cr. L. J. 90 ; 37 C. 642 (F. B.) ; 10 C. L. J. 450 ; 10 C. W. N. 55. A proceeding under S. 318 of Cr. Pro. Code of 1861 was held to be a judicial proceeding. So also a proceeding under Ch. XLI of the Code of 1872. 5 A. 224=A. W. N. 1882, 240. An enquiry

10 R. 1
J 402 ; 9 A
= tax Coi

Clause (n).—An offence under s. 9 of Act I of 1878 is a cognizable offence. 27 C. 144 ; see also 24 C. 691.

s. 40
(37) of
Act, in
respect of which a complaint may be made under s. 20 of the Cattle
Trespass Act, 29 M. 517=5 Cr. L. J. 68; see also 52 M. L. J. 251=28
not make the use
19 Ind. Cas. 1008=
without ticket in a
train is not an offence, 20 A. 95; 11 C. W. N. 100. A mere neglect to
maintain one's wife and children is not an offence, 4 M. 234=24 M. 600;
27 C. 131; 4 C. W. N. 201; 4 C. W. N. 253; 33 B. 22; 7 W. R. 101
1885 P. R. 13; 16 M. 234.

Clause (p).—This section has no application so far as the police of
Calcutta and Bombay is concerned 31 C. 357. A person who is not
physically present may also be present, 42 M. 446=20 Cr. L. J. 422=25
M. L. T. 274=36 M. L. J. 552. In the absence of a sub-Inspector, the
Head constable in charge of a police station can investigate a cogni-
zable case, 2 Pat. 379=4 P. L. T. 521=24 Cr. L. J. 375. In Madras
under Judicial Notification No. 3, dated the 31st January, 1883, the

Clause (r).—Now the word pleader includes "mukhtears", who were
not allowed to practise in Criminal Courts as a matter of right, but
could do so with the permission of the Court, 30 A. 66 F. B.; 38 C. 488.
But a Magistrate cannot withhold permission to a mukhtar by a general
order, 7 C. W. N. 524; see also 15 C. W. N. 409=38 C. 488=13
C. L. J. 635; see also 9 Ind. Cas. 711=12 Cr. L. J. 118=4 S. L. R. 195.

Clause (s).—This clause has no application to the police in Calcutta
and Bombay. 31 C. 557.

Clause (t).—It is improper to appoint a convicting Magistrate as a
public prosecutor, 8 B. H. C. Cr. 126. A pleader appointed by a brother
accused on appeal is not
so 11 B. H. C. R. 102 A
or is an irregularity. 35

5. (1) All offences under the Indian
Penal Code shall be investigated, inquired
into, tried and otherwise dealt with according
to the provisions hereinafter contained.

(2), All offences under any other law shall be investigated,
inquired into, tried and otherwise dealt with
according to the same provisions, but subject
to any enactment for the time being in force
against other laws.

regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences

Notes—A contempt against High Court does not fall under the section. 10 C. 109 (P. C.); 17 C. W. N. 1253. This Act has no application where the special Act regulates the manner or place of investigation. 23 C. L. J. 621 = 3 Lah. 359; 44 M. L. J. 231 = 72 Ind. Cas. 175. Where the special Act is silent as regards procedure this Act is applicable. 31 B. 438; see also 37 C. L. J. 208 = 71 Ind. Cas. 611; 41 C. 694 = 18 C. W. N. 486; 30 C. W. N. 598; 31 C. W. N. 506; 9 C. W. N. 18; 43 C. L. J. 231. A rule framed under an Act is not an enactment: 25 C. W. N. 661.

PART II.

Constitution and Powers of Criminal Courts and Offices.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

*6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

I.—Courts of Session :

II.—Presidency Magistrates :

III.—Magistrates of the first class :

IV.—Magistrates of the second class :

V.—Magistrates of the third class.

Notes.—A magistrate is a Court only where he is exercising Judicial functions. 36 C. 433. The terms, District Magistrate and Magistrate of the first class do not include a Presidency Magistrate. 32 M. 303. terms "Deputy Magistrate" and "General Deputy Magistrate" are known in this Code. 23 M. L. J. 670 = 13 Cr. L. J. 850.

* In places where the Frontier Crimes Regulation, 1901 is cases may be tried by a Council of Elders. See the Frontier Regulation, 1901 (III of 1901), s. 11.

B.—Territorial Divisions.

*7. (1) Every province (excluding the presidency towns) shall be a sessions division, or shall consist of sessions divisions: and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

Power to alter divisions and districts. (2) The Local Governments may alter the limits or † the number of such divisions and districts.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless altered.

Presidency-towns to be deemed districts. (4) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.

Clause (1)—A Local Government cannot create a Sessions Division.
10 B. 274.

8. (1) The Local Government may divide any district outside the presidency-towns into sub-divisions, or make any portion of any such district a sub-division, and may alter the limits of any sub-division.

Existing sub-divisions maintained. (2) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices outside the Presidency-towns.

9. (r) The Local Government shall establish a Court of Session for every sessions division, and appoint a judge of such Court.

* The Court of Session is the Criminal

(2) The Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order is made, the Courts of Session shall hold their sittings as heretofore.

(3) The Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts

(4) A Sessions Judge of one sessions division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Local Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act

Notes.—The High Court exercising Original Criminal Jurisdiction is not a Court of Sessions. 51 C 980=20 C. W. N. 384=26 Cr. L. J 385. A Sessions Judge is not ousted of his jurisdiction by making over an appeal to Additional Sessions Judge 44 A. 157=19 A. L. J 952=23 Cr. L. J 107. The powers of a Sessions Judge under Cl. 32 of the Act, cannot be exercised by a Joint Sessions Judge. 2 C. W. N. 305 (note); 9. B. 104; 26 M. 137.

10. (1) In every district outside the presidency-towns the Local Government shall appoint a Magistrate District Magistrate. of the first class, who shall be called the District Magistrate.

(2) The Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate* and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code †[or under any other law for the time being in force,] as the Local Government may direct.

‡[(3) For the purposes of sections 192, sub-section (1), 407, sub-section (2) and 528, sub-sections (2) and (3), such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate,]

* The words "for a period not exceeding six months" were omitted by s. 2 of the Code of Criminal Procedure (Amendment) Act, 1 (XVIII of 1923)

† These words were inserted by *ibid.*

‡ This sub-section was added by *ibid.*

Notes.—The District Magistrate is subordinate to the District Judge. See 25 P. R. 1908. The term "District Magistrate" discharges the duties of a District Magistrate. The term "District Magistrate" discharges the duties of a District Magistrate. 32 M. 303

11. Whoever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Notes—No vacancy occurs where the District Magistrate is absent on casual leave. 24 O. C. 255=22 Cr. L. J. 713 ; 63 Ind. Cas. 873=40 C. 256. In such a case there can be no succession. Ibid.

12. (1) The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns ; and the Local Government, or the District Magistrate, subject to the control of the Local Government may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction. (2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

Notes—A Magistrate ordinarily has jurisdiction over the whole district. 29 A. 389 ; see 29 C. 389=5 C. W.N. 551 ; 10 C. W. N. 1095 ; 2 L. B. R. 80 ; 24 O. C. 25. So a Magistrate appointed for the whole district, has jurisdiction over the whole district, even when he is in charge of a particular part of it. 21 Cr. L. J. 321=1 P. L. T. 632 A Magistrate is not ousted of his jurisdiction when he is transferred to another place which is situate in the same District. 22 M. 47 ; see also 75 P. R. 1884.

Power to put Magistrate in charge of sub-division. 13. (1) The Local Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of powers to District Magistrate. (3) The Local Government may delegate its powers under this section to the District Magistrate.

14. (1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes, of cases or in regard to cases generally, in any local area outside the presidency-towns.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the Local Government may by general or special order direct.

(3)* The Local Government may delegate, with such limitations as it thinks fit, to any officer under its control, the powers conferred by sub-section (1)

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

Any area—The words "any area" in subsection (1) may include the whole Province. 1918 P. R. 7=39 Cr. L. J. 310; see also 1901 P. R. 24; 25 C. 857; 44 Ind. Cas. 326. He can be appointed to try a particular case. 29 Bom. L. R. 996=A. I. R. 1927 Bom. 501.

15. (1) The Local Government may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings

Powers exercisable by Bench in absence of special direction.

* The words "with the previous sanction of the Governor-General Council" were omitted by s. 2 and Schedule I of the Devolution A 1920 (XXXVIII of 1920)

as a member of the Bench, belongs, and, as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Notes.—Where a Bench of Magistrates established by the Local Government under this section, is to consist of not less than two members, one member of the Bench cannot alone adjudicate upon a case. A. W. N. 1902. 148. The absence of some of the Bench Magistrates, who were present at the earlier stage of a trial, from the further stages of the trial and at the time of judgment, does not vitiate the trial or invalidate the conviction. 15 Cr. L. J. 549=24 Ind. Cas. 957=1914. M. W. N. 867. Simultaneous hearing of two cases by a Bench is bad. 69 Ind. Cas. 376=25 O. C. 182. In case of difference of opinion of a Bench the chairman has got a casting vote. 18 C. W. N. 384=14 Cr. L. J. 684.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules for guidance of Benches, consistent with this Code, for the guidance of Magistrates' Benches in any district respecting the following subjects:—

- (a) the classes of cases to be tried ;
- (b) the times and places of sitting ;
- (c) the constitution of the Bench for conducting trials ;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

Notes.—A reference by a Bench of Hon'ble Magistrates on difference of opinion between them to a District Magistrate is irregular and not justified by the provision of the Criminal Procedure Code. 16 Cr. L. J. 113=27 Ind. Cas. 117. In such a case benefit of doubt should be given to the accused. *Ibid.*

17. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches ; and

(2) Every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall also be subordinate to the sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

Notes.—A Magistrate of the First Class is subordinate to the District Magistrate. 7 A. 353=A. W. N. 1885, 257 (F. B.). This section empowers a District Magistrate to make rules or give special orders connected with the Code as to the distribution of work among Subordinate Magistrates and Bench Magistrates. 12 A. L. J. 803=36 A. 468=15 Cr. L. J. 584=25 Ind Cr. 116. Magistrate is not subordinate to the District Magistrate nor the Sessions Judge, except so far Procedure Code. 13 M. L. J. 274=20 M. 390.

D.—Courts of Presidency Magistrates.

18. (1) The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by a Bench of Presidency Magistrates.

12. [(3) A Presidency Magistrate may be appointed under this section for such term as the Local Government may, by general or special order, direct.]

13. * [(4) The Local Government may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the Local Government may direct.]

Notes.—This section confers full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrate. 7 Bom. L. R. 833=2 Cr. L. J. 770.

19. Any two or more of such persons may (subject to the rules made by the Chief Presidency Magistrate under the powers hereinafter conferred) sit together as a Bench.

20. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Notes.—47 C. 147=24 C. W. N. 79.

21. (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

- (a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;
- (b) the times and places at which Benches of Magistrates shall sit;
- (c) the constitution of such Benches:

* Sub-sections (3) and (4) were added by s. 3 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(d) the mode of settling differences of opinion which may arise between Magistrates in session ; and

(e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates, * [including Additional Chief Presidency Magistrates] are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

Notes.—Rule 8 of the Rules framed by the Chief Presidency Magistrate. 28 C. W. N. 903.

Er—Justices of the Peace.

†[22. Every Local Government, so far as regards the territories subject to its administration† may by notification in the official Gazette appoint such§ (persons resident within British India and not being the subjects of any foreign State) as it thinks fit to be Justices of the Peace within and for the local area mentioned in such modification]

Notes.—Vide 34 M. 343.

23. [Justices of the Peace for the Presidency-towns] Omitted by s. 4 of Act XII of 1923.

24. [Present Justices of the Peace.] Omitted by s. 4 of Act XII of 1923.

* These words were inserted by s. 4 of the Code of Criminal Procedure

25. In virtue of their respective offices, the Governor-General, *Ex-officio* Justices of the Peace, ¹ Governors, Lieutenant-Governors and Chief Commissioners, the Ordinary Members of the Council of the Governor-General, ² (and the Judges of the High Courts) are Justices of the Peace within and for the whole of British India, Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving; and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and the Magistrates, may be suspended or removed from office by the

Local Government :

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority.

Suspension and removal of Justices of the Peace.

27. [†]The Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

Offences under Penal Code.

28. Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried—

* These words were substituted for the words "the Judges of the Lower Burma Courts" by the Lower Burma Courts This Act has since been 1923 (XI of 1923) n Council may suspend or appointed by him, and" (the Devolution Act, 1920

- (a) by the High Court, or
- (b) by the Court of Session, or
- (c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

Notes—Third class Magistrates have no jurisdiction to try offences punishable under s. 20 of Act VI of 1878 2 Weir, 23. This section subject to the provision of this Code, empowers the High Court and the Court of Sessions to try any offence under the Penal Code. 8 A. 665=A. W. N. 1886, 254. The object of the legislature is to exclude offences of great gravity from the provisions of s. 250 of the Criminal Procedure Code. The words "triable by a Magistrate" in that section mean triable under section 28 of the Code by a Magistrate. 139 P. L. R. 1902.

29 (1) Subject to the * [other provisions of this Code],
 Offences under other any offence under any other law shall, when
 laws. any Court is mentioned in this behalf in such
 law, be tried by such Code.

(2) When no Court is so mentioned, it may be tried by the High Court or † [subject as aforesaid] by any Court constituted under this Code by such offence is shown in the eighth column of the second schedule to be triable.

Notes—A third class Magistrate has no jurisdiction to try an offence under section 20 of Act VI of 1878. 2 Weir, 23.

‡ [29A. No Magistrate of the second or third class shall
 inquire into or try any offence which is punishable
 otherwise than with fine not exceeding
 fifty rupees where the accused is an Euro-
 pean British subject who claims to be tried
 as such]

Trial of European
 British subjects by sec-
 ond and third class
 Magistrates.

* These words were substituted for the words and figures "provisions of section 447" by s. 5 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words were inserted by s. 5 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ Section 29A was inserted by s. 6 of the Criminal Law Act, 1923 (XII of 1923).

- | | | |
|---|---|---|
| (b) Courts of Magistrates of the second class : | { | Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law ;
Fine not exceeding two hundred rupees ;* |
| (c) Courts of Magistrates of the third class. | { | Imprisonment for a term not exceeding one month ;
Fine not exceeding fifty rupees. |

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.*

Notes.—A Magistrate whose powers are limited by this section has no power to pass an enhanced sentence under section 75. L. B. R.

33. (1) The Court of any Magistrate may award such terms of imprisonment in default of payment of fine as is authorized by law in case of such default :

Power of Magistrates to sentence to imprisonment in default of fine.

Provided that—

- Proviso as to certain cases.
- (a) the term is not in excess of the Magistrate's powers under this Code ;
- (b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine, shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence, otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

* The words "Whipping (if specially empowered)" in sub-section (1) and sub-section (3) of section 32 were repealed by the Whipping Act, 1909 (IV of 1909).

Notes.—The effect of this section read with s. 65 of the Penal Code is to limit the maximum imprisonment which a District Magistrate with higher powers may inflict to one-fourth of seven years L. B. R. (1893—1900) 281. Para 2 does not apply where the substantive sentence is one of fine only. L. B. R. (1872—1892) 486.

34. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years.

Higher Powers of certain District Magistrates.

Notes.—In every appeal, and a *fortiori* in every reference under this section, it is obviously the duty of the Sessions Judge to carefully weigh the evidence himself and not to rely only upon the weight attached to it by the Court whose order is appealed against or is referred to for confirmation. L. B. R. (1872—1892) 516.

Sentences which Courts and Magistrates may pass upon European British subjects.

* [34A. Notwithstanding anything contained in sections 31, 32 and 34—

- (a) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and
- (b) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both.]

35 (1) †[When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code,] sentence him, for such offences to the several punishments prescribed therefor which such Court is competent to inflict; such punishments,

Sentence in cases of conviction of several offences at one trial.

* Section 34A was inserted by s 7 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words were substituted for the words "When a person convicted at one trial of two or more distinct offences, the Court by s 7 of the Code of Criminal Procedure (Amendment) Act, (XVIII of 1923).

when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court ;

Maximum term of punishment. Provided as follows :—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years ;

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, * [the aggregate of consecutive] sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.†

Notes.—This section does not empower a District Magistrate or any other Magistrate to pass an aggregate sentence, instead of separate sentences, upon an accused person convicted at one trial of two or more distinct offences. 14 P. R. 1886 Cr. A direction that several sentences of transportation passed on an accused person on a conviction of two or more distinct offences at the same trial, should be concurrent, is illegal, being contrary to the provisions of section 35. Rat. Un. Cr. C. 383 = Cr. Rg. 34 of 1884. The fact that an accused person is convicted under s. 41

the same offence, is
vers referred to in
section does not
ice under ss 457
the trying Magis-
ovision of para 2

Separate sentences in a case of house-breaking with intent to commit theft, and theft are illegal under this section. 2 Weir. 34. Where the

* These words were substituted for the word 'aggregate' by s. 7 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The Explanation and Illustration to s. 35 were repealed by *ibid.*

common object of a riot and a Criminal trespass was the same, separate conviction for both the offences is not valid. 8 C. W. N. 305. This section being permissive with respect to the passing of separate sentences for each offence of which an accused may be found guilty, a Criminal Court is not bound to pass separate sentences in such a case. L. B. R. (1872—1892) 271. Under this section, if separate sentences are passed for each offence of which an accused has been found guilty, the sentences must commence the one after the expiry of the other. Concurrent sentences of imprisonment are not recognised by the Criminal Procedure Code. L. B. R. (1872—1892), 526. In view of the provisions of s. 35, it is not illegal to direct a sentence of imprisonment to run concurrently with a sentence of transportation for life. 21 P. R. 1913 Cr.=50 P. L. R. 1914=15 Cr. L. J. 68=22 Ind. Cas 420. The power of passing concurrent sentences is confined to cases where a person is convicted at one trial of two or more distinct offences. 16 O C 370=15 Cr. L. J 300=23 Ind Cas. 508. See also 11 A. L. J 263; 20 S. L. R. 23; 22 C. W. N. 597; 20 C. W. N. 1300; 19 A. L. J. 310; 13 Bom. L. R. 200; 14 Cr. L. J. 388; 21 Cr. L. J. 398. This section has reference only to the conviction of an accused person of two or more offences at one trial. It does not include the case of separate trials held on the same day for separate offences committed by the same person. 2 Weir 30. The restriction is limited to cases in which the Magistrate is at liberty to hold one trial for distinct offences under s. 234 of the Code of 1898, 2 Weir 31. It is not illegal to award concurrent sentences under this section; when a person is convicted at one trial of two or more distinct offences and sentenced to several punishments, such sentences must not be directed to run simultaneously. 6 C. P. L. R. 9 Cr; see also 8 C.P.L.R. 1.

Subsection (2)—An accused, who has been sentenced to concurrent terms of imprisonment, no one of which is individually appealable, has no right of appeal against them collectively. 14 Cr. L. J. 254=17 C. W. N. 825.

Proviso (a)—According to this proviso the maximum term of imprisonment awardable as an aggregate sentence is 14 years. A sentence of transportation in lieu of imprisonment awarded under s. 59, Penal Code, is therefore subject to the limitation, which has been provided by this section in case of sentences of imprisonment. 7 C. P. L. R. 29. An aggregate sentence of 20 years' rigorous imprisonment is illegal. 105 P. L. R. 1910=11 Cr. L. J. 679.

C—Ordinary and Additional Powers.

36. All District Magistrates, Sub Divisional Magistrates and Ordinary powers of Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Notes—Vide 3 M. L. T. 311=31 M. 315=7 Cr. L. J. 360 (F.B)

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance and Cancellation of Powers.

39. (1) In conferring powers under this Code the Local Government may, by order, empower persons to exercise their office, their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Notes—A magistrate of the second class, who begins a trial in that capacity up to the passing of the sentence, and who previously to the passing of the sentence has been empowered as a Magistrate of the first class, can inflict a severer sentence than he could have inflicted as a Magistrate of the second class. 7 A. 414 (F.B.)=A. W. N. 1885, 1051; see also 10 C. W. N. 293 (notes).

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is* [appointed] to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs or has otherwise directed† exercise the same powers in the local area‡ [in which] he is so [appointed].*

* This word was substituted for the word, "transferred" by s. 8 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

† The words "continue to" were omitted by *ibid.*

‡ These words were substituted for the words "to which" by *ibid.*

Notes—Even after transfer and conferring of appellate powers on a Magistrate, the original powers continue in him. 2 Bom. L. R. 536. This section relates only to transfer from one district to another. Part II, Cr.C. 322; see also the powers of a Magistrate. Collector, his powers are withdrawn by a fresh notification, though he is posted in a less responsible post. 2 Weir. 36.

41. (1) The Local Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the presidency-towns,—

- (a) in the taking or preventing the escape of any other person whom such Magistrate or police officer is authorized to arrest;
- (b) in the prevention or suppression of a breach of the peace or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

Notes—A police officer is authorized to employ a *chaukidar* to assist him in arresting a person or in preventing his escape. 6 C. W. N. 337. The assistance which can be demanded is the personal assistance of the individual. 2 Weir. 37.

Aid to person other than police officer, executing warrant.

43.¹ When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant; if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Notes—The word "near" in certain cases might include a distance of two miles. Col. Dig. 14 of 1874.

44. (1) Every person, whether within or without the presidency, to whom it is given, shall be bound to give information of certain offences.

to whom it is given, shall be bound to give information of certain offences punishable under any of the following sections of the Indian Penal Code (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

(2) For the purposes of this section, the term "offence," includes any act committed at any place out of British India which would constitute an offence if committed in British India.

Notes—Sending reports by a chaukidar is sufficient. 5 P. R. 1839. Omission to send report does not amount to abetment. 14 Cr. L. J. 610=6 Bur. L. T. 153.

*45. (1) Every village-headman, village-accountant, village-watchman, village police officer, owner or occupier of land, and the agent of any such owner or occupier [in charge of the management of that land], and every officer employed in the collection of the revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station whichever is the nearer, any information which he may [possess] respecting—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of

* This section does not apply to areas in which the Burma Village Act, 1907 (Bur. Act VI of 1907), is in force, see s. 7 (2) of that Act.

† These words were inserted by s. 9 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

‡ This word was substituted for the word "obtain" by *ibid.*

which he is headman, accuotant, watchman or police-officer; or in which he owns nr occupies land or is agent, or collects revenue nr rent;

- (b) the resort to any place within, nr the passage through, such village of any person whom he knows, or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender,
- (c) the commission of, or intention to commit, in or near such village, any non-bailable offence or any offence punishable under section 143, 144, 145, 147 or 148 of the Indian Penal Code;
- (d) the occurrence in or near such village of any sudden or un-natural death or of any death under suspicious circumstances * [or the discovery in nr near such village of any corpse or part of a corpse, so circumstances which lead to a reasonable suspicion that such a death has occurred, or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person,]
- (e) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, † [231, 232, 233, 234, 235, 236, 237, 238,] 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 407, 435, 436, 449, 450, 457, 458, 459, ‡ [460, 489A, 489B, 489C and 489D],
- (f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information

* These words were added by s 9 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

† These figures were inserted by *ibid.*

‡ These figures, letters and words were substituted for the word figures "and 460" by *ibid.*

(2) To this section—

(i) "village" includes village-lands :

(ii) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Governor General in Council in any part of India, in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 397, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

(3) Subject to rules in this behalf to be made by the Local Government, the District Magistrate * [or Sub-divisional Magistrate] may from time to time appoint one or more persons * [with his or their consent] † [to perform the duties of a village-headman under this section, whether a village-headman has or has not been appointed for that village under any other law.]

Appointment of village-headmen by District Magistrate or Sub-divisional Magistrate in certain cases for purposes of this section.

Notes.—When information, as to the commission of a murder is conveyed to the nearest Magistrate or police officer by one of the parties bound to give such information under s. 45 of the Cr. Pro. Code, it is not reasonable that every other person, who may possibly, be bound to give information, should be prosecuted for not having done so, and convicted of an offence under s. 176, of the Penal Code, 20 C. 316. The owner or occupier of a house within a village is not an owner or occupier of land within the meaning of this section. 12 M. 92=1 Weir 102.

An order passed by a District Magistrate under the rules framed by Government under s. 45 (3) is an executive order, and not subject to the revisional powers of the High Court. A. W. N. 1907, 168=5 Cr. L. J. 476=29 A. 563. The obligation ceases when the police is informed by a chaukidar. 23 Cr. L. J. 162.

Clause (c).—The information required to be given is the commission of an offence. 9 Cr. L. J. 224=5 M. L. T. 257. In cases of bailable offence no information need be given. 32 M. 258 ; 30 P. R. 1887.

* These words were inserted by s. 9 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "to be village-headmen for the purposes of this section in any village for which there is no such headmen appointed under any other law" by *ibid.*

Clause (d)—In cases of sudden and unnatural death the village headman is to give information. 23 W. R. 60 ; see also 11 C. 619 ; 20 P. R. 1887. Death caused by fall from a tree is not unnatural within the meaning of this section. 23 Cr. L. J. 345.

Subsection (3)—An order under this sub-section is not subject to revision. 29 A. 563.

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

46. (1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with transportation for life.

Notes.—The Punjab Frontier Crimes Regulation makes no alteration in the general principle of the law, that in making an arrest, no more force is to be used than is necessary, and that death should not be caused, unless . . . R. 1894 Cr. . .

possession. 5
or submission. 17 Cr. L. J. 87=9 S. L. R. 141. In cases of illegal arrest the right of private defence can be exercised. 16 C. W. N. 549

Clause (3)—An Excise officer cannot fire at a opium smuggler while pursuing him. 21 Cr. L. J. 97.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested, has entered into, or is within, any place, person residing in, or being in charge of such place, shall, on demand of such person acting as

such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Notes.—Under this section the house-holder is obliged to give the police facilities in discharging their duties. 41 C. 350=18; C. W. N. 896=15 Cr. L. J. 745.

48. If ingress to such place cannot be obtained under section

Procedure: where ingress not obtainable. 47 it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be

obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and so order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance :

Provided that, if any such place is an apartment in the actual

Breaking open same. occupancy of a woman (not being the person to be arrested), who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

49. Any police-officer or other person authorized to make an

Power to break open doors and windows for purposes of liberation. arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint. 50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape. *

Notes.—A magistrate is incompetent to require bail for the personal appearance of an absentee accused person at a future date, where he

* For penalty for unwarrantable personal violence by a police-officer to a person in his custody see s. 29 of the Police Act, 1851 (V of 1861).

has been permitted to appear by agent under s. 182. Col. Dig. Cr. 9 of 1873.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.*

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

B.—Arrest without Warrant.

When police may arrest without warrant. 54. (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest—

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of his having been so concerned ;

* As to disposal of such property, see s. 513, *infra*.

- secondly*, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;
- thirdly*, any person who has been proclaimed as an offender either under this Code or by order of the Local Government ;
- fourthly*, any person in whose possession anything is found which may reasonably be suspected to be stolen property * [and] who may reasonably be suspected of having committed an offence with reference to such thing ;
- fifthly*, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ;
- sixthly*, any person reasonably suspected of being a deserter from Her Majesty's "Army, Navy or Air Force"† or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service ;
- seventhly*, any person who has been procured in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, ‡ or otherwise, liable to be apprehended or detained in custody in British India ;
- eighthly*, any released convict committing a breach of any rule made under section 565, sub-section (3) ; and
- ninthly*, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the

* This word was substituted for the word " or " by s. 10 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Substituted by Act 10 of 1927.

‡ 44 & 45 Vict. c. 69.

§ This clause was added by s. 30 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.]

(2) This section applies also to the police in the town of Calcutta*.

Notes—Under sub-section (1) a constable is empowered to make an arrest without warrant, when he has credible information that the person has committed a cognizable offence. 11 A. L. J. 957 = 15 Cr. L. J. 179 = 12 Ind. Cas. 755 = 36 A. 6 ; 21 A. 7. 44 C. 76. A ch very strictly. 44 C. 76. A ch 17 C. 366 ; 3 A. 60 ; 35 C. 361. 13 Cr. L. J. 709 ; 25 Cr. L. J. 652

Clause (1)—A police-officer may arrest any person charged with a cognizable offence. 40 M. 1028 ; 81 Ind. Cas. 140 ; 21 A. L. J. 791 = 25 Cr. L. J. 652 ; 2 Pat. 379 = 4 P. L. T. 521 = 24 Cr. L. J. 375 ; 36 A. 6 = 11 A. L. J. 957 ; 22 Cr. L. J. 758. A reasonable suspicion or a credible information cannot be based on bare suspicion. 29 C. W. N. 98 = 52 C. 319 = 26 Cr. L. J. 625 = 40 C. L. J. 489.

Clause (4)—To authorise a police-officer to arrest a person under this clause no formal complaint is necessary ; 8 W. R. 28.

Clause (5)—Vide 12 B. 377 , 40 M. 1028 , 36 A. 6

Clause (7)—7 Bom. L. R. 463 = 2 Cr. L. J. 439 ; 29 A. 377.

Arrest of vagabonds, 55. (1) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested—

- (a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence ; or
- (b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself ; or
- (c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

* Certain word after this repeated by Bom. Act. IV of 1902 omitted.

.. (2) This section applies also to the police in the town* of Calcutta.*

Notes.—This section is intended for the suppression of habitual bad characters, whom an officer in charge of a police station suddenly finds within his jurisdiction, or about whom he has good cause to fear that they will commit serious harm before there is time to apply to the nearest Magistrate empowered to deal with the case under s. 112, Cr. Pro. Code 14 A. 45=A. W. N. 1891, 179. This section applies to the Police in the Presidency town of Calcutta. 31 C. 557; 7 C. W. N. 661. A habitual gambler can not be arrested under this section. 3 L. B. R. 94; 3 Cr. L. J. 20. In order to justify a Police to arrest under this section it must be found that the person arrested is a habitual robber or house-breaker. 47 M. 442=46 M. L. J. 447=25 Cr. L. J. 563. See also 35 A. 407; 27 Cr. L. J. 628. The powers given under this section are exceptional powers and should be used very carefully. 14 A. 45. For cases of illegal arrest, vide section 41 A. 483=17 A. L. J. 458=20 Cr. L. J. 381; 1883 A. W. N. 223. A person arrested under this section should be allowed bail. 11 A. 45.

56. (1) When any

Procedure when police-officer deposes subordinate to arrest without warrant. to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made. †[The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.]

(2) This section applies also to the police in the town of Calcutta.*

Notes.—The above section was held inapplicable where an arrest for dacoity was made without warrant by a subordinate police-officer, in
 * a subordinate
 † So is not
 27 C. 320.

* The letter "s" and the words "and Bombay" were repealed by s. 2 (1) and Sch. A of the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

† These words were inserted by s. 11 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

57. (1) When any person who in the presence of a police-officer

Refusal to give name
and residence.

has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Notes.—Arrest and detention by a police constable is justified when the accused refuses to give his name and address. 5 Bom L. R. 597. But such detention is not legal when his name and address are known to one of two arresting police officers. 46 M. 605=24 Cr. L. J. 599.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this Chapter, pursue such person into any place in British India.

Pursuit of offenders
into other jurisdictions.

59* [(1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.]

Arrest by private persons
and procedure on
such arrest.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him

* This sub-section was substituted by s. 12 of the Code of Criminal Procedure (Amendment) Act, 1908 (XXIII of 1908).

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to furnish a name or residence which appears to be true, and if, on inquiry, it is found to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

Notes—A constable cannot proceed to arrest as a Police Officer without a warrant. 17 C. W. N. 978 = 14 C. 366; 3 A. 60. ; reservation of peace, cognizable offences or 11 M. 480; see also 5 P. L. J. 129; 35 C.

this section need not personally take such offender to the police-station. This section will be complied with if he forwards him to the police station. Vide 23 A. 266; 29 A. 575; 11 M. 480; 8 P. L. T. 204.

60 A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Notes—The provision of this section is complied with when the matter is reported to a Magistrate. 5 B. H. C. R. 99

61. No police-officer shall detain in custody a person arrested without warrant for a longer period than under all circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Notes—This section is complied with when the person arrested is taken to the Magistrate's Court within the time specified. 36 C. 166; 11 M. 98.

62. Officers in charge of police stations shall report to the Magistrate the names of persons arrested under this Code, and the nature of the offence for which they were arrested.

of their respective stations, whether such persons have been admitted to hail or otherwise.

Discharge of person apprehended.

63. No person who has been arrested by a police officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

68. (1) Every summons* issued by a Court under this Code, shall be in writing in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

* For forms, see Sch. V, Forms I and XXXI, *infra*.

(2) Such summons shall be served by a police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it or other public servant.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

Notes—Summons issued to an assessor must be under this section. *C. W. N. cxvi.* The validity of a summons depends upon the observance of formalities mentioned in this section. *5 A. 7* ; see also *7 M. H. C. R. App. 43* ; *2 Weir 38* ; *1 Weir 100*. A summons must be sealed. *37 M. L. J. 588=21 Cr. L. J. 800*.

69. (1) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Notes—Service of summons is effected by delivering copy of the original to the person summoned. *5 B. H. C. R. 20* ; *40 A. 557* ; *6 A. W. N. 93*.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a presidency-town, with his servant residing with him and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Notes—Service of summons on the mother of the accused is not proper service. *26 Cr. L. J. 1370*. A summons can be left with a servant. *2 C. L. J. 48* (note). But such service on a juror is not proper. *1889 A. W. N. 13*.

71. If service in the manner mentioned in sections 69 and 70 cannot be effected by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Notes—Service under this section can be made only when provisions laid down in it are strictly complied with. Vide 43 C. L. J. 113; 31 C. W. N. 148; 23 Cr. L. J. 739=69 Ind. Cas. 627.

Service on servant of Government or of Railway Company. 72 (1) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court under his signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

Notes—This procedure is to be applied only in cases of summons issued by a Court of Justice. 18 Cr. L. J. 733=40 Ind. Cas 733. A summons to a Sub-Inspector of the Railway Police should be served through the superintendent of the Railway Police of that district. 6 P. L. T. 215=26 Cr. L. J. 965.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is to be there served.

74. (1) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit purporting to be made before a Magistrate, that such summons has been

served and a duplicate of the summons purporting to be served (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

Form of warrant of arrest.

75. (1) Every warrant of arrest issued by a Court under this Code shall be in writing signed by the presiding officer, or in the case of a Bench of Magistrates by any member of such Bench; and shall bear the seal of the Court.

Continuance of warrant of arrest.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it or until it is executed.

Notes.—The seal of the Court is essential to the validity of a warrant, and its absence makes the warrant void and an arrest made in execution of such warrant is not legal. 19 C. W. N. 224=16 Cr. L. J. 336=28 Ind. Cas. 672; see also 9 B. H. C. R. 154; 18 B. 636. The warrant must also be signed. 6 M. 396, 2 P. L. J. 487=18 Cr. L. J. 526. Signing by initial is a mere irregularity. 3 P. L. J. 493; 8 A. 293; 5 C. W. N. 447; but see 23 C. 896. A signature by stamp is not sufficient. 6 M. 396. A warrant must rightly describe the accused person. 18 B. 636; see also 9 B. H. C. R. 154; 28 C. 399. The offence must be specified in the warrant. 15 W. R. 4. The name of the person, who is to execute the warrant must be mentioned in the warrant. 14 Cr. L. J. 42; 16 P. R. 1913 Cr.; 16 P. R. 1904.

76. (1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance

Court may direct security to be taken.

before the Court.

(2) The endorsement* shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; and

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Recognizance to be forwarded.

Notes—A warrant, on which there is an endorsement for bail to be taken for the appearance of the accused on a certain date, does not lapse on the expiry of that date. 13 C. W. N. 1091. Where a technical offence is committed a bailable warrant should issue in non-bailable cases. (1911) M. W. N. 452.

77. (1) A warrant of arrest shall ordinarily be directed to one or more police officers, and, when issued by a Presidency Magistrate shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrants to several persons. (2) When a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more, of them.

Notes—Sections 77 and 83 of the Criminal Procedure Code are directory and not mandatory, and a substantial compliance with their provisions is sufficient. 3 P. L. J. 493 = 19 Cr. L. J. 747 ; 26 Cr. L. J. 845 ; but see 24 Cr. L. J. 14.

78. (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in or enters on, his land or farm or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. A warrant directed to any police-officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notes—The endorsement of a warrant must be made by the officer to whom it is addressed and it must be by name. 27 C. 457 :

W. N. 85; see also 22 Cr. L. J. 145; 3 Pat. L. J. 493. As regards execution of warrants by other officers in cases of offences under Special Acts, vide 10 Cr. L. J. 3; 37 C. 122; 21 Cr. L. J. 9.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Notes.—An opportunity of reading the warrant should be given. 15 C. 748; see also 3 P. L. J. 493 = 19 Cr. L. J. 747; 23 C. 890; 10 C. 18; 13 Bom. L. R. 168; 37 C. 122. In an arrest under section 56 of the Code of Criminal Procedure this section has no application. 27 C. 320; 4 C. W. N. 318.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed. 82. A warrant of arrest may be executed at any place in British India.

Notes.—This section is essentially an enabling section. 1 P. R. 156 Cr. An arrest outside British India is illegal. Vide 21 Cr. L. J. 303; 25 C. 20 (P. C.); 7 Bom. L. R. 83; 48 Ind. Cas. 865; 31 P. R. 1918.

83. (1) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction it is to be executed.

* (2) The Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name thereon and, if practicable, cause it to be executed in manner hereinbefore provided within the local limits of his jurisdiction.

Notes.—This section is applicable to warrants issued under the provisions of Act XIII of 1899. A. W. N. 1897, 210.

* Sub-section (2) of this section, so far as it applies to the police in the Town of Bombay, has been repealed by the City of Bombay Police Act, 1902 (Bom. Act IV of 1902)—see s. 2 (1) of that Act.

84. (1) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police-officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed, will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(4) This section applies also to the police in the town* of Calcutta.*

† 85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police or the Commissioner of Police in a presidency-town within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner or District Superintendent.

† 86. (r) Such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court :

* The letter "s" and the words "and Bombay" were repealed by s. 2 (1) and Sch. A of the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

† Sections 85 and 86, so far as they apply to the p Town of Bombay, have been repealed by the City of Bo Act, 1902 (Bom. Act IV of 1902) see s. 2 (1) of that Act.

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security,* as the case may be, and forward the bond to the Court which issued the warrant.

(3) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

C.—Proclamation and Attachment.

87. (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation† requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

* See Sch. V., Form III, *infra*.

† See Sch. V., Forms IV and V., *infra*.

Notes. A proclamation issued under this section against an absconder, who does not appear from the proceedings are J 332; see also 27 A 572=A. W. N. 1905, 102=2 A. L. J. 340=2 Cr. L. J. 247; 19 M. 3; 1919 P. R. 32; 19 W. R. 19. In proceeding under the provisions of ss. 87 and 88 of the Criminal Procedure Code, the Magistrate ought to take particular care to preserve the proclamation, and the record must be so clear as to satisfy the Court that all the legal formalities were duly observed. 14 Bom. L. R. 163=14 Ind. Cas 757=13 Cr L. J. 293=1 Bom. Cr C. 104. A person against whom a warrant of arrest has been issued and who absconds, should be dealt with under the Cr. Procedure Code and not under s. 172 I. P. Code. 7 N. W. P. 302.

Where the property of an absconder had been attached and sold, and had vested in a third person, the Court held that the sale would

This section prescribes certain rules with regard to time and place. In respect of these matters, the section is imperative and the neglect of the rule with regard to time is no more excusable than would be the neglect of the rule requiring publication in two places. 5 M. L. J 215.

Attachment of property of person absconding.

88 (1) The Court issuing a proclamation under section 87 may at any time order the attachment of any property, moveable or immovable, or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other moveable property, the attachment under this section shall be made—

- (a) by seizure, or
- (b) by the appointment of a receiver; or
- (c) by an order in writing prohibiting the delivery of property to the proclaimed person or to any his behalf; or
- (d) by all or any two of such methods, as the Court

(d) If the property ordered to be attached is immoveable, the attachment under the section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(e) by taking possession ; or

(f) by the appointment of a receiver ; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf ; or

(h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure*.

†[(6A) If any claim is preferred to, or objection made to the attachment of, any property attached under this section within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under this section, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part :

Provided that any claim preferred or objection made within the period allowed by this sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.]

†[6B. Claims or objections under sub-section (6A) may be preferred or made in the Court in which the order of attachment is issued or, if the claim or objection is in respect of property attached under an order endorsed by a District Magistrate or Chief Presidency Magistrate in accordance with the provisions of sub-section 2, in the Court of such Magistrate.]

[6C) Every such claim or objection shall be inquired into by the Court in which it is preferred or made :

* See now the Code of Civil Procedure, 1908 (Act V of 1908).

† Sub-sections (6A) to (6E) were inserted by s. 13 of the Code of Criminal Procedure (Amendment) Act, 1913 (XVIII of 1913).

- Provided that, if it is preferred or made in the Court of a District Magistrate, or Chief Presidency Magistrate, such Magistrate may make it over for disposal to any Magistrate of the first or second class or to any Presidency Magistrate, as the case may be, subordinate to him.]

*[6D) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (6A) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.]

*[(6E) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.]

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government, but it shall not be sold until the attachment † [and made under sub-section 6D), sub-section], unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court, may cause it to be sold whenever it thinks fit,

Notes—This section is not intended to apply to an undivided member of a Hindu joint-family, for his interest cannot be seized being unascertained 2 Weir. 43. The attachment of property under this section is intended to enforce the attendance required by a proclamation issued under s. 87. 6 C. P. L. R. 38 Cr. To lay a foundation for the issue of a proclamation under s. 87 with an accompanying order of attachment under s. 88, it is necessary to comply strictly with the provisions of the law relating to the issue of a warrant in a case, where a summons is the ordinary mode of enforcing attendance. 5 N. L. R. 125. There is nothing in the language of s. 88 to restrict the meaning of the word "property" and it includes the rights and interests of persons, who, as members of an undivided family, are jointly entitled to the property of the family 2 Weir. 43 (Foot-notes). The provisions of the Criminal Procedure Code do not bar the right of civil suit for recovery of property sold under the provisions of Ss. 88 and 89 on the ground that the proclamation and sale were absolute nullities on account of material irregularities A. W. N. 1904, 159)

* See foot-note † at p. 52.

† These words were inserted by s. 13 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under sub-section (7) of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

Notes—The provisions of the Cr. Pro. Code do not bar the right of civil suit for the recovery of property sold under the provisions of ss-88 and 89, on the ground that the proclamation and sale were absolute nullities on account of material irregularity. A. W. N. 1904, 159; see also 17 Cr. L. J. 414. Under this section, it must be proved that the accused person had not absconded and the proof must be given within 2 years. 15 Bom. L. R. 75.

D.—Other Rules regarding Processes.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of, or in addition to of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant* for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the Court is moved

But
S. C.
3; 5

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

Notes—A bond to produce a witness may be taken from a Muktear. A. W. N. 1901, 35.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Notes—This section refers to a case where a person is bound by a bond to appear in Court. 17 Cr. L. J. 132.

Provisions of this Chapter generally applicable to summonses and warrants of arrest. 18 & 19. 93. The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED

A.—Summons to produce.

94. (1) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872,* sections 123 and 124, or to apply to a letter, post card, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities.

Notes.—Inspection of an accused's books cannot be ordered. 5 Bom. L. R. 928. The Court and Magistrate are convertible terms. 39 C. 953 P. C. Documents mean relevant documents. 5 Bom. L. R. 980; 19 C. 52; 15 C. 109; 47 C. 647; 4 P. L. W. 65; but see 16 Cr. L. J. 225=36 P. R. 1914. This section contemplates the issue of a summons or warrant. 12 C. W. N. 1075; 47 C. 164.

95. (1) If any document, parcel or thing in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs.

(2) If any such document, parcel or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

B.—Search warrants.

96. (1) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, subsection (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant ; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the Postal or Telegraph authorities.

Notes.—The first para. of this section requires as a condition precedent to the issue of a search-warrant, that the Court must have reason to believe that the person against whom the warrant is issued, is not likely to produce the document or thing in his possession, as required by the summons or order under s. 94 or requisition under s. 95 (1) served upon him. 5 Bom. L. R. 1032. Under the provisions of this section, it is lawful for a Magistrate to issue a warrant for the search and production of anything before him, when he considers that such production is necessary for the purposes of investigation or inquiry under the Code. 13 M. 18=2 Weir 44. An accused may be asked to produce documents in his possession. 43 Ind. Cas. 793 ; 5 Ind. Cas. 17.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend ; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

98. (1) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place, "or,

if a District Magistrate, Sub-Divisional Magistrate or a Presidency Magistrate, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit, sale, manufacture or production of any obscene object such as is referred to in section 292 of the Indian Penal Code or that any such obscene objects are kept or deposited in any place* he may by his warrant † authorise any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials "or of such obscene objects" as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials "or such obscene objects" before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any stamps, coins, instruments or materials "or of such obscene objects" knowing or having property to have been stolen or otherwise unlawfully obtained; or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging "or the said obscene objects to have been or to be intended to be sold, let to hire, distributed, publicly exhibited, circulated, imported or exported." ‡

* The words within quotations have been inserted by Act VIII of 1925.

† See Sch. V., Form IX, *infra*.

(2) The provisions of this section with respect to—

- (a) counterfeit coin,
- (b) coin suspected to be counterfeit, and
- (c) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply respectively to—

- (a) pieces of metal made in contravention of the Metal Tokens Act, 1889 or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,
- (b) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts, and
- (c) instruments or materials for making pieces of metal in contravention of that Act.

Notes.—A search is illegal in the absence of any search warrant. 5 C. W. N. 343; 38 C. 304. But where a house is suspected to contain stolen property, it can be searched even without search warrant. 42 A. 67.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Disposal of things found in search beyond jurisdiction.
Power to declare certain publications forfeited, and to issue search warrants for the same.

*[99A. (1) Where—

- (a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or
- (b) any document,

* Section 99A was inserted by s. 5 and Schedule III of the Law Repeal and Amendment Act, 1922 (XIV of 1922).

wherever printed, appears to the Local Government to contain any seditious matter, "or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects"† "or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious belief of that class"* that is to say, any matter the publication of which is punishable under section 124A "or section 153 A."† "or section 295 A"* of the Indian Penal Code,† the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document, to be forfeited to His Majesty, and thereupon any police-officer may seize the same, wherever found in British India, and any Magistrate may by warrant authorize any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.]

§ [99B. Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 99A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious "or other" matter of such a nature as is referred to in sub-section (1) of section 99A."]

Hearing by Special Bench. § [99C. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges]

* Inserted by Act 25 of 1927.

† Inserted by Act 36 of 1926.

‡ XLV of 1860.

§ Sections 99B to 99G were inserted by s. 5. and Schedule III of the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

|| Substituted by Act 34 of 1926.

* [99D. (1) On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained "seditious or other matter of such a nature as is," † referred to in sub-section (1) of section 99A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.]

Vide 47A. 298; 1927 All. 649.

Evidence to prove nature or tendency of newspapers. * [99E. On the bearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made †

* 99F Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and such rules may be framed by the High Court.

*99G. No order passed or action taken under section 99A shall be called in question in any Court otherwise than in accordance with the provisions of section 99B.]

C.—Discovery of Persons wrongfully confined

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement to an offence, he may issue a search-warrant, and the person to

* *Vide* foot-note § at page 60..

† Substituted by Act 36 of 1916.

such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Notes—A search-warrant should not be issued for the production of a grown up ward. 10 Cr. L. J. 29.

D.—General Provisions relating to Searches.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98,* [section 99A] or section 100.

Direction, etc. of search-warrants,

102. (1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search thereof.

Persons in charge of closed place to allow search.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed.

103. (1) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search †[and may issue an order in writing to them or any of them so to do].

Search to be made in presence of witnesses.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which

* This word, figures and letter, were inserted by s. 5 and Schedule III of the Press Law Repeal and Amendment Act, 1921 (XIV of 1921).

† These words were added by s. 14 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

they are respectively found shall be prepared by such officer or other person and signed by such witnesses ; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

* [(5) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code.]

Notes—The contents of a search list need not be proved by the

list thus prepared contain. 2 Weir. . mean the same q. 12 Cr. L. J. 479=12 Ind Cas. 87.

E—Miscellaneous.

Power to impound document, etc., produced. 104. Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

Magistrate may direct search in his presence. 105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

* This sub-section was added by s. 14 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Notes—Searches can be held by the District Magistrates.
C. W. N. 865=16 C. L. J. 231 P.C.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.*

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the peace on Conviction.

106. (1) Whenever any person accused of † [any offence punishable under Chapter VIII of the Indian Penal Code, other than an offence punishable under section 143, section 149, section 153A, or section 154 thereof, or of] assault or other offence involving a breach of the peace, or of abetting the same, ‡ or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond§ for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

* Ss. 20 to 26 of the Sind Frontier Regulation, 1892 (III of 1892), are to be read with and construed as part of this Chapter—see s. 27 of Regulation, and s. 3 *supra*.

† These words and figures were substituted for the word "rioting" by s. 15 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ The words "or of assembling armed men or taking other unlawful measures with the evident intention of committing the same," were omitted by *ibid*.

§ See Sch. V, Form X, *infra*.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an appellate Court* [including a Court hearing appeals under section 407] or by the High Court when exercising its powers of revision.

Notes—The object of this chapter is prevention of crimes. 6 Bom. L. R. 34; see also 81 Ind. Cas. 154—25 Cr. L. J. 1226. An order under

the inclusion not only of a necessary but also of a probable feature, circumstance, antecedent condition or consequence 75 Ind. Cas. 983. The expression "other offence" in this section refers *ejus dem generis* with the offences against public tranquillity and of assault mentioned in the section. 20 L. W. 481=81 Ind. Cas. 920=47 M. 846=47 M. L. J. 232. "Offences involving a breach of the peace" refer to offences in which breach of the peace is an ingredient. 29 M. 190; 30 C. 93; 47 M. 846; 35 C. 315; 81 Ind. Cas. 920.

B.—Security for keeping the Peace in other Cases and security for Good Behaviour.

107. (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity the Magistrate † [if in his opinion there is sufficient ground for proceeding] may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix

Security for keeping the peace in other cases.

* These words were inserted by s. 15 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).
† These words were inserted by s. 16, *ibid.*

(2) Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.

(3) When any Magistrate not empowered to proceed under subsection (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, after recording his reasons issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, together with a copy of his reasons.

(4) A Magistrate before whom a person is sent under * [subsection (3)] may in his discretion detain such person in custody† [pending further action by himself under this Chapter].

Notes—Section 203 does not apply to applications under section 107 but every Magistrate possesses inherent power of refusing an application which he finds groundless. 76 Ind. Cas. 25=25 Cr. L. J. 89. In proceedings under this section attachment of property cannot be ordered. 77 Ind. Cas. 238=25 Cr. L. J. 350. An order of a Magistrate refusing to take evidence in summons cases, 1924 All. 698. This section is preventive and precautionary and not punitive. 11 C. W. N. 223; 9 C. W. N. 898; 13 C. W. N. 555; 36 C. 562; 31 C. 350. Simultaneous recording evidence in summons cases, 1924 All. 698. This section is preventive and precautionary and not punitive. 11 C. W. N. 223; 9 C. W. N. 898; 13 C. W. N. 555; 36 C. 562; 31 C. 350. Simultaneous

* This word, figure and brackets were substituted for the words "this section" by s. 16 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVI of 1923).

† These words were substituted for the words "until the completion of the inquiry hereinafter prescribed" by *ibid.*

order under ss. 107 and 144 cannot be passed, 7 C. W. N. 142. The expression "wrongful act" means an act forbidden or declared penal by any law. 21 Cr. L. J. 453. This section does not empower a Magistrate to restrain a person from exercising lawful rights. 104 P. L. R. 1903; 19 W. R. 47; 7 A. 461.

108. Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that

Security for good behaviour from persons disseminating seditious matter.

there is within the limits of his jurisdiction any person who, within (or without such limits either orally or in writing,* [or in any other manner intentionally] disseminates or attempts to disseminate, or in anywise abets the dissemination of,—

- (a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, or
- (b) any matter the publication of which is punishable under section 153A of the Indian Penal Code, or
- (c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,

such Magistrate, † [if in his opinion there is sufficient ground for proceeding] may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year as the Magistrate thinks fit to fix.

No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, ‡ [and edited, printed and published] in conformity with, the rules laid down in the Press and Registration of Books Act, 1867, § [with reference to any matter contained in such publication] except by the order or under the authority of the Governor-General in

* These words were inserted by s. 17, *ibid*

† These words were inserted by s. 17 of the Code of Criminal Procedure

‡ "or printed"

(XVI of 1923)

§ These words were inserted by s. 17 of the Code of Procedure (Amendment) Act, 1923 (XVIII of 1923).

Council or the Local Government or some officer empowered by the Governor-General in Council in this behalf.

Notes.—This section is applicable where seditious matter has been disseminated and there is fear of the repetition of the offence. 11 Bom. L. R. 743 ; see also 47 B. 438—25 Bom. L. R. 97.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

- (a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or
- (b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

Notes.—As sections 109 and 110 have the same object, an order under section 110 is not valid during the continuance of an order under section 109. A security order should be in an amount which the accused may be reasonably expected to be able to furnish. L. B. R. (1872-1892) 422. There must be separate proceedings in security cases against each accused person. L. B. R. 1872-1892, 421. The fact that a man does no work, does not necessarily mean, what the law requires, that he has no ostensible means of subsistence. 5 C. W. N. 28.

110. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction—

- (a) is by habit a robber, house-breaker,* thief, †[or forger], or
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or

* The word "or" was omitted by s. 18, *ibid.*

† These words were inserted by *ibid.*

- (c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or
- * (d) habitually commits, or commission of, the extortion, cheating or able under Chapter XII of the 'Indian' Penal Code, or under section 489A, section 489B, section 489C or section 489D of that Code, or]
- (e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

Notes.—The word "habit" means persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts. 'Habitually' must be taken to mean repeatedly or persistently. 25 Ind. Cas. 764=25 Cr. L. J. 60=1924 Nag. 19. Where a man has been arrested on a substantive charge but released because that charge could not be sustained, a prosecution under this section on the same evidence is not desirable. 77 Ind. Cas. 302. A person cannot be bound down under this section upon evidence of repute unless such evidence is very strong and almost universal. 25 Cr. L. J. 808=81 Ind. Cas. 344. Mere suspicion is not sufficient to bind a man down to be of good behaviour under this section. 5 Pat. L. T. 129=2 Pat. L. R. 79=25 Cr. L. J. 35. This section might be used against persons combining together for the purpose of cheating. 4 Bom. L. R. 38=26 B. 418. It is in the power of the Court, in ordering securities to be given, to assign some geographical limit within which such sureties must reside. 24 A. 471=A. W. N. 1902, 122.

111 [Proviso as to European vagrants] Omitted by s. 8 of Act XII of 1923.

112. When a Magistrate acting under section 107, section 108, section 109 or section 110 deems it Order to be made. necessary to require any person to show cause under such section, he shall make an order in writing,

* This clause was substituted for the original clause (d) by *ibid.*

setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Notes.—It is not open to a Magistrate to reject sureties as unfit because they do not comply with certain arbitrary conditions which were not included in the order under this section. 82 Ind. Cas. 154.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Notes.—A Magistrate may hold proceedings even in cases of persons illegally arrested. 12 Cr. L. J. 533.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court :

Summons or warrant in case of person not so present.
Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Notes.—An *ex parte* order cannot be passed. 1 C. L. R. 48.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112; and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Notes.—Strict compliance is required of an order under this section. 17 M. L. J. 438; 25 Cr. L. J. 132; 1 Pat. L. T. 632; 11 Bom. L. R. 740.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond.

Power to dispense with personal attendance.

for keeping the peace, and may permit him to appear by a pleader.

Notes.—The Code makes a marked distinction between bonds for keeping the peace and bonds for good behaviour and this section is limited to the former. 2 Weir. 54.

117. (1) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

* (3) Pending the completion of the inquiry under sub-section (1) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person, in respect of whom the order under section 112 has been made, to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that—

- (a) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and

* This sub-section was inserted by s. 18 of the Code of Criminal Procedure (Amendment) Act, 1932 (XVIII of 1932)

setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Notes.—It is not open to a Magistrate to reject sureties as unfit because they do not comply with certain arbitrary conditions which were not included in the order under this section. 82 Ind. Cas. 154.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Notes.—A Magistrate may initiate proceedings even in cases of persons illegally arrested. 12 Cr. L. J. 533.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court :

Summons or warrant in case of person not so present.
 Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Notes.—An *ex parte* order cannot be passed. 1 C L. R. 48.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112; and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Notes.—Strict compliance is required of an order under this section. 17 M. L. J. 438; 25 Cr. L. J. 132; 1 Pat. L. T. 632; 11 Bom. L. R. 740.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond

Power to dispense with personal attendance.

for keeping the peace, and may permit him to appear by a pleader.

Notes.—The Code makes a marked distinction between bonds for keeping the peace and bonds for good behaviour and this section is limited to the former. 2 Weir. 54.

117. (x) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials and recording evidence in warrant-cases, except that no charge need be framed.

• (3) Pending the completion of the inquiry under sub-section (x) the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person, in respect of whom the order under section 112 has been made, to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded :

Provided that—

- (a) no person against whom proceedings are not being taken under section 108, section 109, or section 110, shall be directed to execute a bond for maintaining good behaviour, and

• This sub-section was inserted by s. 11 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 112;

* [(4)] For the purposes of this section the fact that a person is an habitual offender * [or is so desperate or dangerous as to render his being at large without security hazardous to the community] may be proved by evidence of general repute or otherwise.

* [(5)] Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.

Notes: The addition of a more exacting

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Ind. Cas. 723
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118. (r) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

first, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly, that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

thirdly, that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

* Original sub-sections (3) and (4) were renumbered (4) and (5) respectively by the Criminal Procedure (Amendment) Act,

Notes—It is not competent in a Magistrate who has passed an order under this section to delegate to another the duty of inquiry into the sufficiency of the security tendered, but should make an inquiry himself. 25 Cr. L. J. 91 = 76 Ind. Cas. 27. An order under this section clearly does not amount to a conviction. L. B. R. 1872—1892, 490. The order should show that the person is likely to commit a breach of the peace. 7 C. W. N. 32.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Notes—The "discharge" of section 119 is merely a permission to depart 33 M. 85; see also 6 C. W. N. 163; 15 Cr. L. J. 531; 24 Ind. Cas. 843.

C.—Proceedings in all Cases subsequent to order to furnish Security.

120. (1) If any person, in respect of whom an order requiring security is made under section 106 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

Notes—The Magistrate has power to postpone the date from which the security should take effect. 24 A. L. J. 327 = 92 Ind. Cas. 889.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Notes—This section is explicit and so far as bonds for good behaviour are concerned, is exhaustive, though it might not be so as bonds for keeping the peace. 5 P. R. 1910 Cr. = 169 P. L. R. 1910.

*[122. (1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter, on the ground that such surety is an unfit person for the purposes of the bond :

Power to reject sureties. Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him.

(2) Such Magistrate shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall in making the inquiry record the substance of the evidence adduced before him.

(3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub-section (1), and the report of such Magistrate (if any) that the surety is an unfit person for the purpose of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing :

Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

(Notes—The ground for refusal by a Magistrate to accept a surety

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123. (1) If any person ordered to give security under section 106 or section 118 does not give such security† on imprisonment in default of security, or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be com-

* Section 122 was substituted by s. 20 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† See Sch.V. Forms XIII, XIV and XV, *infra*.

mitted to prison* or, if he is already in prison, be detained in prison* until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it.

(2) When such per

Proceedings when to be laid before High Court or Court of Session.

the orders of the Sessions Judge or Magistrate, per proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit.

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

†[(3A.) If security has been required in the course of the same proceedings from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge or the High Court under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned shall not exceed the period for which he was ordered to give security.]

†[(3B) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (3A) to an Additional Sessions Judge or Assistant Sessions Judge, and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

* As to punishment for escaping or attempting to escape, see s. 224 of the Indian Penal Code (XLV of 1860)

† Sub-sections (3A) and (3B) were inserted by s. 21 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(4) If the security is tendered to the officer in charge of the jail he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.

Kind of imprisonment. (5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour * [shall, where the proceedings have been taken under section 108† be simple and, where the proceedings have been taken under "section 109 or" ‡ section 110, be rigorous or simple as the Court or Magistrate in each case directs.

Notes—Proceedings under this section are not proceedings in confirmation but for orders and a Sessions Judge has to pass a definite order binding over and not to confirm an order passed by a Magistrate. O. W. N. 773. Sub-section (2) seems to contemplate more of administrative than judicial functions to be exercised by the Sessions Judge when a case is submitted to him under this section. 1924 Sind 120. This sub-section does not authorise a Sessions Judge to hear a case. 81 Ind. Cas. 936 = 25 Cr. L. J. 1112.

124. (1) Whenever the District Magistrate or a Chief Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this Chapter, § may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) whenever any person has been imprisoned for failing to give security under this Chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or

* These words and figures were substitutes for the word "may" by s. 21 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Certain words and figures after this repealed by Act X of 1926 have been omitted.

‡ Certain words and figures before this were inserted by Act X of 1926.

§ The words "whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate," were omitted by s. 21 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

the number of sureties or the time for which security has been required.]

*[(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts :

Provided that any conditions imposed shall cease to be operative when the period for which such person was ordered to give security has expired.]

†[(4) The Local Government may prescribe the conditions upon which a conditional discharge may be made.]

‡[(5) If any condition upon which any such person has been released by the District Magistrate or Chief Magistrate, or order of discharge was made, the District Magistrate or Chief Magistrate may cancel the same.]

§[(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police-officer without warrant, and shall thereupon be produced before the District Magistrate or Chief Presidency Magistrate,

Unless such person then gives security in accordance with the terms of the original order for the unexpired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate or Chief Presidency Magistrate may remand such person to prison to undergo such unexpired portion.

A person remanded to prison under this sub-section shall, subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the unexpired portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor.]

Notes—Vide. 37 M 125 F. B.

* This sub-section was substituted for the original sub-section by *ibid.*

† Sub-sections (4) and (5) were inserted by *ibid.*

‡ Sub-section (6) was inserted by s. 22 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

125. The Chief Presidency or District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his district not superior to his Court.

Power of District Magistrate to cancel any bond for keeping the peace or for good behaviour.

Notes.—The provisions of this section only gives the power to cancel any bond executed. 32 C. 948=9 C. W. N. 860; see also 11 A. L. J. 16=35 A. 103. A Magistrate is not competent under this section to send a person to jail. 8. A. L. J. 658.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this Chapter within the local limits of his jurisdiction.

Discharge of sureties.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person, for whom such surety is bound to appear or to be brought before him.

*[126A]† When a person for whose appearance a warrant or summons has been issued under the proviso to sub-section 3) of section 122 or under section 126, sub-section (2), appears or is brought before him, the Magistrate shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

Security for unexpired period of bond.

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* Sub-section (3) of section 126 was renumbered as s. 126 A by S. 21 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII) of 1921.

† These words were substituted for the words "When such person appears or is brought before the Magistrate, such Magistrate, shall cancel the bond" by *ibid.*

CHAPTER IX.*

UNLAWFUL ASSEMBLIES.

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town† of Calcutta†

Notes.—A Deputy Commissioner of Police can act under this section. 7B. 42.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869,† and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

* The whole of this Chapter, so far as it applies to the City of Bombay, is repealed by the City of Bombay Police Act, 1902 (Bombay Act IV of 1902)—see s. 2 (r) and Schedule.

† The letter "s" and the words "and Bombay" were repealed by s. 2 (r) and Sch. A of the City of Bombay Police Act, 1902 (Bombay Act IV of 1902).

‡ The Indian Volunteers Act, 1869 (XX of 1869), has since been repealed by the Auxiliary Force Act, 1920 (XLIX of 1920).

130. (1) When a Magistrate determines to disperse any such

Duty of officer commanding troops required by Magistrate to disperse assembly.

assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869* to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law,

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

131. When the public security is manifestly endangered by

Power of commissioned military officers to disperse assembly.

any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

132. No prosecution against any person for any act purporting

Protection against prosecution for acts done under this Chapter.

to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the [Local Government]; and—

(a) no Magistrate or police-officer acting under this Chapter in good faith,

(b) no officer acting under section 131 in good faith,

* The Indian Volunteers Act, 1869 (XX of 1869), was repealed by the Auxiliary Force Act, 1920 (XLIX of 1920).

† These words were substituted for the words "Governor General in Council" by s. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920).

(c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and

(d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence :

*[Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in His Majesty's Army except with the sanction of the Governor General in Council.]

Notes.—Prosecution cannot be started without sanction, 16 M. 473 ; . 2 B. 288.

CHAPTER X.

PUBLIC NUISANCES.

†[133. (1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons

* This proviso was added by *ibid.*

† Section 133 was substituted by s. 24 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

living or carrying on business in the neighbourhood or passing and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal, to do any one or more of the following things, to wit:—

to remove such obstruction or nuisance; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support such building, tent or structure; or

to remove or support such tree; or,

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in such manner provided in the said order; or

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and to move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A public place includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.]

Notes—This section deals with the condition of things at the time when the inquiry is held. 22 A. L. J. 436=1924 All. 667. It is open to a Magistrate under this section, to order the removal of a hund but he cannot order its reconstruction after its removal 40 C. L. J. 597. A Magistrate cannot make an order under this section, absolute without recording evidence and simply on the basis of local inspection made by him. 49 A. 475=25 A. L. J. 377=28 Cr. L. J. 291=100 Ind. Cas. 371.

Service or notification of order. 134. (1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by
 al Government
 tuck up at such
 information to
 such person.

Notes—Omission to follow the direction as contained in this section is a mere irregularity. 12 M. 475; 16 C. 9; 3 W. R. Cr. 4.

Person to whom order is addressed to obey or show cause or claim jury. 135. The person against whom such order is made shall—

(a) perform, within the time * [and in the manner] specified in the order, the act directed thereby; or

(b) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a Jury to try whether the same is reasonable and proper.

Notes—Where a party shows cause an application for jury is not maintainable. 13 C. W. N. 367.

Consequence of his failing to do so. 136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

* These words were inserted by s. 25 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.*

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

Notes.—Sub-section (2) indicates the proper procedure to be adopted in enforcing an order under s. 133. 44 C. L. J. 211. Clause (3) refers to suits for damages. 15 C. 460. (F. B.).

141. If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such orders as he thinks fit, and such order shall be executed in the manner provided by section 140.

Notes.—Where jury fails to give a verdict the party may ask for the appointment of a fresh jury. 12 C. W. N. 1047, but see 21 A. L. J. 165.

142. (1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

* XLV of 1860.

† See Sch. V., Form XIX, *infra*.

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Notes—An injunction should issue only in case of imminent danger.
21 W. R. 86 ; 1 W. R. 8.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order * any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code† or any special or local law.

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

144. (1) In cases where, in the opinion of a District Magistrate, a Chief Presidency Magistrate, Sub-divisional Magistrate, or of any other Magistrate ‡ [(not being a Magistrate of the third class)] specially empowered by the Local Government or the Chief Presidency Magistrate or the District Magistrate to act under this section, § [there is sufficient ground for proceeding under this section and] immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order || stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obs-

* See Sch. V. Form XX, *infra*.

† XLV of 1860.

‡ These words and brackets were inserted by s. 27 of the Code Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ The words were inserted by *ibid*

|| See Sch. V Form XXI, *infra*.

truement, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time, of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, * [either on his own motion or on the application of any person aggrieved] rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

... ..-ation is received, the Magistrate
... opportunity of appearing before
... and shewing cause against the
... rejects the application wholly or in
part, he shall record in writing his reasons for so doing.]

† [(6)] No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

Notes.—The object of this section is to provide a speedy and emergent remedy in case of dispute which are likely to lead to breach of the peace. O. L. J. 54 = 77 Ind. Cas. 721 = 125 Cr. L. J. 433. This section is not intended to restrict the liberty of an individual if there is no apprehension of a breach of the peace on account of any act to be done by him. 82 Ind. Cas. 42 = 25 Cr. L. J. 1178 = 1924 P. 767. Undue importance should not be attached to a temporary injunction under this section and in a case of rioting an order under this section should not be treated as substantive evidence of possession. 5 Pat. L. T. 656 = 81 Ind. Cas. 535 = 25 Cr. L. J. .

* These words were inserted by s. 27 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was inserted by *ibid.*

‡ Original sub-section (5) was renumbered (6) by *ibid.*

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

145. (1) Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, ^{Inquiry as to possession.} * [receive all such evidence as may be] produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

* These words were substituted for the words 'receive the evidence' by s 28 of the Code of Criminal Procedure (Amendment) Act, 1923. (XVIII of 1923.)

truction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(4) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

†[(5)] Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and shewing cause against the order; and, if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.)

†[(6)] No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

Notes—The object of this section is to provide a speedy and emergent

in a case of rioting an order under this section should not be treated as substantive evidence of possession 5 Pat. L. T. 656=81 Ind. Cas. 535=25 Cr. L. J.

* These words were inserted by s. 27 of the Code of Criminal Pro-

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

145. (1) Wherever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, ^{Inquiry as to possession.} * [receive all such evidence as may be] produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject :

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date :

* These words were substituted for the words 'receive the evidence' by s 28 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

Provided also, that, if the Magistrate considers the case of emergency, he may at any time attach the subject of dispute pending his decision under this section.

(5) Nothing in this section shall preclude any party required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case, the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties ^{*} [or should under the first proviso to section (4) be treated as being] in such possession of the said subject, he shall issue an order [†] declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until evicted; [‡] § [and when he proceeds under the first proviso to sub-section (4), may restore to possession the party forcibly wrongfully dispossessed].

¶ (7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding, and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purpose of such proceeding is, the persons claiming to be representatives of the deceased party shall be made parties thereto;

¶ (8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody of such

* These were inserted by Act XVIII of 1923.

† See Sch. V, Form XXIII, *infra*.

‡ For limitation of suits to recover possession of such property, see Act XVIII of 1923, Sch. I, art. 47.

§ Code of Criminal Procedure, original sub-section (7) (Amendment) Act, XVIII of 1923.

¶ Sub-section (8), was added by *ibid*.

of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property or the sale-proceeds thereof as he thinks fit.]

*(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

•(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.

Notes.—Proceedings under this section cannot be instituted with respect to moveables. 11 O. L. J. 59=77 Ind. Cas. 728=25 Cr. L. J. 440. In proceedings under this section it is competent to the Magistrate not only to award possession of the land in dispute but also to grant a right of way to one of the parties. 26 Bom. L. R. 436=48 B. 512. The object of this section is to bring to an end by a summary process disputes relating to land, etc., which are in their nature likely if not suppressed, to end in breaches of the peace. 25 Cr. L. J. 78=75 Ind. Cas. 990; see also 5 Pat. L. T. 458=25 Cr. L. J. 906=81 Ind. Cas. 442.

146. (1) If the Magistrate decides that none of the parties was then in such possession, or is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach† it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof:

‡Provided that the District Magistrate or the Magistrate who has attached the subject of dispute may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of a breach of the peace in regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if he thinks fit, §[and if no receiver of the property, the subject matter in dispute, has been appointed by any Civil Court] appoint a receiver thereof who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure. ||

* Sub-sections (9) and 10 were added by Act XVIII of 1923.

† See Sch. V. Form XXIII, *infra*.

‡ This proviso was added by s. 29 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ These words were inserted by *ibid*.

|| See now the Code of Civil Procedure, 1908 (V. of 1908).

* Provided that, in the event of a receiver of the property, the subject matter in dispute, being subsequently appointed by any Civil Court, possession shall be made over to him by the receiver appointed by the Magistrate, who shall thereupon be discharged.

Notes.—The expression "competent Court" in this section is wide enough to cover a Revenue Court 22 A. L. J. 803=25 Cr. L. J. 1242. The property can be attached where the Magistrate fails to satisfy himself as to which of the parties is in possession. 4 C. W. N. 655; 14 C. 361; 21 C. W. N. 1059; 23 C. W. N. 910; 6 Bom. L. R. 723; 7 Bom. L. R. 18; 2 Weir. 110.

† 147. (1) Whenever any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied, from a police-report or other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water as explained in section 145, sub-section 1, or in any other law, or in any custom or otherwise, he may make an order in writing requiring the parties concerned in such dispute to attend the Court in person or by pleader within a time to be fixed by such Magistrate and to put in written statements of their respective claims, and shall thereafter inquire into the matter in the manner provided in section 145, and the provisions of that section shall, as far as may be, be applicable in the case of such inquiry.

(2) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right;

Provided that no such order shall be made where the right is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such institution.

(3) If it appears to such Magistrate that such right does not exist, he may make an order prohibiting any exercise of the alleged right.

(4) An order under this section shall be subject to any subsequent decision of a Civil Court of competent jurisdiction.]

Notes—In the absence of a finding that the right has been exercised within the periods specified in this section, the final order under this section cannot be maintained. 5 Pat. L. T. 457—81 Ind. Cas. 708.

148. (1) Whenever a local inquiry is necessary for the purposes of this Chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under this Chapter,* the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. †[Such costs may include any expenses incurred in respect of witnesses, and of pleaders' fees, which the Court may consider reasonable].

Notes—This section does not lay down that local enquiry by a Magistrate is not proper. 15 C. L. J. 267 ; 5 C. W. N. 686 ; 24 Cr. L. J. 507 ; 4 Pat. L. T. 297.

* The words "for witnesses, or pleaders' fees, or both" were omitted by s 31 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "All costs so directed to be paid may be recovered as if they were fines" by *ibid.*

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

149. Every police-officer may interpose for the purpose of preventing, and shall to the best of his ability, prevent, the commission of any cognizable offence.

Notes—Under this section a police officer cannot pass any order.
47 A. 205.

150. Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

152. A police-officer may, of his own authority interpose to prevent any injury attempted to be committed to his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark or buoy or other mark used for navigation.

153. (1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

Notes.—Some standard weight must be used for comparison; and some reasonable allowance should be granted for wear and tear of the rough and ready methods of hazaar shop keepers. 20 P. R. 1913; 15 Cr. L. J. 11.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

154 Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Notes.—Statements made in course of police investigation merely because they happen to be signed contrary to the provisions of section 162, Criminal Procedure Code, do not thereby become admissible under this section. 25 Cr. L. J. 401=77 Ind. Cas. 481=1925 Mad. 106.

*155. (1) When information is given to an officer in charge of a police-station of the commission, within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

* This section, so far as it applies to the police in the town of Bombay, is repealed by s. 2 (1) and Schedule A to the City of Bombay Police Act, 1902 (Bom. Act IV of 1902).

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

Notes—This section does not apply to the Police in the towns of Calcutta and Bombay. 15 C. 595 ; 21 B. 495. Under this section a Police officer cannot investigate in non-cognizable cases without the order of a Magistrate. 29 Bom. L. R. 742—A. I. R. 1927 Bom. 440 ; 26 B. 150 ; 16 C. W. N. 1049 ; 45 Ind. Cas. 277 ; 16 P. R. 1918 ; 19 Cr. L. J. 517 ; 17 Bom. L. R. 69.

156. (1) Any officer in charge of a police-station may, without investigation into cognizable cases, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Notes—Under this section only a Magistrate and not a Sessions Judge can direct investigation to be made. 11 P. R. 1910—184 P. L. R. 1910. A Magistrate cannot order a police investigation after taking cognizance of a case. 54 C. 303 ; see also 12 Cr. L. J. 463.

157. (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers * [not being below such rank as the Local Government may,

*These words were inserted by s. 32 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

by general or special order, prescribe in this behalf] to proceed to the spot, to investigate the facts and circumstances of the case, *[and, if necessary, to take measures] for the discovery and arrest of the offender :

Provided as follows :—

- (a) When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;
- (b) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, †[and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Local Government, the fact that he will not investigate the case or cause it to be investigated.

The words "from information received" mean information given under section 154 14 C. W. N. 326; 15 Cr L. J. 622 The Police of one jurisdiction can act in another jurisdiction. 12 P. R. 1915 Cr. A report under this section is necessary for taking proceedings under s. 159. 4 C. W. N. 351.

158. (1) Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after

*These words were substituted for the words " and in such cases as may be necessary " by Act XVIII of 1923.

† These words were added by *ibid*

recording such instructions on such report, transmit the same without delay, to the Magistrate.

159. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Notes—An enquiry is authorised under this section only on a police report under s. 157. 4 C. W. N. 351. Where a complaint is made to a Magistrate, he is bound to proceed under s. 200. 30 C. 923. After full enquiry by police an enquiry under this section is not proper. 1899 A. W. N. 87. A first class Magistrate can depute a sub-deputy Magistrate, to hold a preliminary enquiry under this section. 40 C. L. J. 113=26 Cr. L. L. 307.

160. Any police-officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Notes—An order under this section must be in writing. Cr. Rep. 18 of 1896; 1 Weir 86; Rai Un. Cr. 850. A police officer can not use force to compel a person to attend as a witness. 7 W. R. 3. An accused cannot be required to attend under this section. 7 M. 274; 2 Weir 120; 4 Bom. L. R. 644.

161. (1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Local Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer] may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the

* These words were inserted by s. 33 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Notes—The statements of witnesses recorded under this section form no portion of the police diary referred to in s. 172. 16 C. 610 ; 9 C. P. L. R. 33 ; 20 C. 642 ; 1896 A. W. N. 93 ; but see 19 A. 390 ; 16 A. 207.

162. *(1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall, if reduced into writing, be not to be signed; use of such statements in evidence, signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid the Court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872.* When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination :

Provided, further, that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential to the interests of justice and is inexpedient to the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Indian Evidence Act, 1872 †

Notes—Under this section as substituted by the Amendment Act of 1923 it is not now permissible for statements made to the police,

* This sub-section was substituted by s. 34, Act XVIII of 1923. "

† 1 of 1872.

whether oral or written, to be put in evidence, in order to corroborate a prosecu^{tion} witness or contradict a defence witness. 26 Bom. L. R. 965=1924 Bom. 519.

No inducement to be offered.

163. (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872,* section 24. .

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

Notes—Hony. Magistrates, Magistrates or Sessions, Judges are persons in authority. Vide 26 M 38 ; 10 C. 775 ; 2 A. 260.

164. (1) †[Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Local Government may, if he is not a police-officer] record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

Notes—This section is not applicable to confessions recorded by a Presidency Magistrate in the course of an investigation held by the Calcutta Police. 29 C. W. N. 300 ; see also 30 C. W. N. 454 ; 96 Ind. Cas. 509.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in s. 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) ††A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a coo-

* 1 of 1872.

† These words were substituted for the words "Every Magistrate not being a police-officer may" by s. 35 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

†† These words were substituted for the words "No Magistrate" by *ibid.*

fession and that if he does so it may be used as evidence against him and no Magistrate] shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect :—

*"[I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe] that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate"

*Explanation :—*It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Search by police-officer. 165. †(1) Whenever an officer in charge of a police-station, or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be obtained in any other manner, such officer may, after recording in writing his reasons for so doing, and specifying in such writing the place in which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

† (2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person ;

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may ‡ [after recording in writing his reasons for so doing]

* These words were substituted for the words "I believe" by s. 35 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These sub-sections were substituted by s. 36 *ibid*.

‡ The words were inserted by *ibid*.

whether oral or written, to be put in evidence, in order to corroborate a prosecution witness or contradict a defence witness. 26 Bom. L. R. 965=1924 Bom. 519.

No inducement to be offered. 163. (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872,* section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

Notes—Hooy. Magistrates, Magistrates or Sessions Judges are persons in authority. Vide 26 M 38; 10 C. 775; 2 A. 260.

164. (1) †[Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Local Government may, if he is not a police-officer] record any statement or confession made, to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

Notes—This section is not applicable to confessions recorded by a Presidency Magistrate in the course of an investigation held by the Calcutta Police. 29 C. W. N. 300; see also 30 C. W. N. 454; 96 Ind. Gas. 509.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in s. 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) ‡[A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a con-

* 1 of 1872.

† These words were substituted for the words "Every Magistrate not being a police-officer may" by s. 35 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words were substituted for the words "No Magistrate" by *ibid.*

fession and that if he does so it may be used as evidence against him and no Magistrate] shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily ; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect :—

*"[I have explained to (*name*) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe] that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,
Magistrate"

Explanation :—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

165. †(1) Whenever an officer in charge of a police-station, or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

† (2) A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person ;

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may ‡ [after recording in writing his reasons for so doing]

* These words were substituted for the words "I believe" by s. 35 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These sub-sections were substituted by s. 36 *ibid.*

‡ The words were inserted by *ibid.*

... the search, and he
... an order in writing
... far as possible, the
thing for which search is to be made]; and such subordinate
officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants †
‡[and the general provisions as to searches contained in section 102
and section 103] shall, so far as may be, apply to a search made
under this section.

§ (5) Copies of any record made under sub-section (1)
or sub-section (3) shall forthwith be sent to the nearest Magis-
trate empowered to take cognizance of the offence and the owner
or occupier of the place searched shall on application be furnished
with a copy of the same by the Magistrate :

Provided that he shall pay for the same unless the Magistrate
for some special reason thinks fit to furnish it free of cost.

Notes—This section does not authorize general search by police
of stolen property in the house of an absconding offender. 38 C. 304;
38 A. 15; 16 C. W. N. 1078; 36 C. 433; 41 C. 26; 35 M. L. J. 127; 27
Cr. L. J. 1795.

166 (1) An officer in charge of a police station ‖ [or a police-
officer not being below the rank of sub-inspec-
tor] making an investigation may require an
officer in charge of another police-station, whe-
ther in the same or a different district, to cause
a search to be made in any place, in any case in which the former
officer might cause such search to be made, within the limits of his
own station.

(2) Such officer, on being so required, shall proceed according
to the provisions of section 165, and shall forward the thing found
if any, to the officer at whose request the search was made.

* These words were substituted for the words "specifying the docu-
ment or thing for which search is to be made and the place to be
searched" by Act XVIII of 1923.

the Code of

* (3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

* (4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).

† (5) The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4) :

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

Notes—Sub-sections (3) and (4) are proposed to be added in order to give power in certain circumstances to an officer in charge of a police station to search or cause to be searched places within the local limits of another police station—*Statement of Objects and Reasons.*

167. (1) Whenever †[any person is arrested and detained in custody, and it appears that the] investigation§
 Procedure when investigation cannot be completed in twenty-four hours. cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station ||[or the police-officer making the investigation if he is not below the rank of sub-inspector] shall forthwith

* Sub-sections (3) and (4) were added by Act XVIII of 1923.

† Sub-section (5) was added by s. 37 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words were substituted for the words "it appears that any" by s. 38, *ibid.*

§ The words "under this Chapter" were omitted by *ibid.*

|| These words were inserted by *ibid.*

transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused * to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :

† Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered, in this behalf by the Local Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Notes—The intention of the Legislature is that an accused should be brought before a Magistrate with as little delay as possible 51 C. 403, 6 M. 69 ; 2 Weir 413 ; 13 C. W. N. 43 ; 11 M. 98 ; 38 C. 166.

Report of investigation by subordinate police-officer. 168. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Notes—Such a report is not a public document. 20. M. 189.

169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station † Release of accused when evidence deficient. [or to the police-officer making the investigation] that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the

* The words and brackets "(if any)" were omitted by Act XVIII of 1923.

† This sentence was added by Act XVIII of 1923.

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accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond,* with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or commit him for trial.

Notes—Withdrawal of complaint is not contemplated under this section. Rat. Un. Cr. C. gr.

170. (r) If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security† from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him.

the accused shall be bound to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons †

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed and shall then send to the Magistrate the original with his rep

* See Sch. V. Forms XXV and XXVI respectively.

† Sub-section (4) has been repealed by Act II of 1926.

Notes.—Sub-section (4) of section 170 provides that the day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate if he is to be forwarded in custody. This provision requires, for example, that all witnesses shall be bound down to appear before the Magistrate on the date when the accused is expected to arrive at the Court if he is forwarded in custody. It has been found to be inconvenient, and, it is understood, is not frequently followed in practice—*Statement of Objects and Reasons.*

Complainants and witnesses not to be required to accompany police-officer.

171. No complainant or witness so his way to the Court of the Magistrate shall be required to accompany a police-officer.

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Notes.—The evidence of a witness who is kept under police surveillance cannot be called voluntary evidence. 4 C. W. N. 49

172. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court ; but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the

provisions of the Indian Evidence Act, 1872, * section 161 or section 145, as the case may be, shall apply.

Notes—This section is not exhaustive. It includes a statement by a police-officer that he examined certain witnesses and the statement of circumstances ascertained from the examination of the witnesses ; but it does not include the actual statement of the witnesses. 20 C. 642. Police diaries can not be placed before the jury ; as provided by s. 172, they are useful, not as evidence, but to aid a court in the trial so as to enable it to make a thorough enquiry on all material points, and to elicit, in the examination of the witnesses, the real facts of the case. 27 C. 295 = 4 C. W. N. 129 Facts and statements written in the police diaries can not be used as material to help the court in a criminal trial to come to a finding on the evidence in the case. 10 C. W. N. 600 = 3 Cr. L. J. 408.

173. †[(1) Every investigation under this Chapter shall be Report of police-officer completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall—

(a) forward, to a Magistrate empowered to take cognizance of the offence on a police-report, a report, in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating
and, if so,

(b) communicate, in such manner as may be prescribed by the Local Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.]

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general and special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make investigation.

* 1 of 1872.

† This sub-section was substituted by s. 42 of the Code Procedure (Amendment) Act, 1923 (XVIII of 1923).

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

*(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial :

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

Notes—A second investigation after submission of the report of the first investigation, on further information is competent. 35 M. L. J. 127; 19 Cr. L. J. 901. A police report should contain the names of the parties and the nature of the information as well as names of the persons acquainted with the case. 37 C. 49; 14 C. W. N. 304; 17 S. L. R. 150.

Police to inquire and report on suicide etc. † 174. (1) The officer in charge of a police-station or some other police-officer specially empowered by the Local Government in that behalf, on receiving information that a person—

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery, or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants

* Sub-section (4) was inserted by s. 40 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests

(5) The following Magistrates are empowered to hold inquests, namely, any District Magistrate, * [Sub-divisional Magistrate or Magistrate of the first class], and any Magistrate especially empowered in this behalf by the Local Government or the District Magistrate.

Notes—The accused is not entitled to copies of statements made at investigations under this section. 28 Cr. L. J. 634=101 Ind. Cas. 495.

175. (1) A police-officer proceeding under section 174 may by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a ten-

* These words were substituted for the words "or Sub-divisional Magistrate" by s. 41 of the Code of Criminal Procedure (Act, 1923 (XVIII of 1923)).

dency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

Notes—A person who is not summoned cannot be convicted of perjury for making false statements. 23 Cr. L. J. 82=6 P. W. R. 1912.

176. (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may, hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.*

Notes—Section 25 of the Coroners Act does not oust the Presidency Magistrate of his jurisdiction under this section. 16 B. 159; 11 C. 1; Rat. Un. Cr. C. 540.

* A similar power is entrusted to the Coroners of Calcutta and Bombay see the Coroners Act, 1871 (IV of 1871), s. 11.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES
AND TRIALS*A.—Place of Inquiry or Trial.*

Ordinary place of in-
quiry and trial, 177. Every offence shall ordinarily be
inquired into and tried by a Court within
the local limits of whose jurisdiction it was
committed.

Notes—Under this section, every offence shall ordinarily be
inquired into and tried by a Court within the local limits of whose juris-
diction it was committed 34A. 451-9 A. L. J. 696=15 Ind. Cas. 991.

Power to order cases
to be tried in different
sessions divisions, 178. Notwithstanding anything contained
in section 177, the Local Government may
direct that any cases or class of cases com-
mitted for trial in any district may be tried
in any sessions division :

Provided that such direction is not repugnant to any direction
previously issued by the High Court under section 15 of the Indian
High Courts Act, 1861,*† [or section 107 of the Government of
India Act, 1915,] or under this Code, section 526.

Notes—The Local Government of Borneo has no power to transfer
a case committed to the Court of the Recorder of Rangoon for trial, to
the Court of the Commissioner. But it can transfer a case from the
District of Rangoon to the Sessions Judge of Pegu. 10 C 643.

* 24 & 25 Vict., c. 104, 5 & 6 Geo 5, c. 61 See now the Govern-
ment of India Act, 1915 (5 & 6 Geo 5, c. 61)

† These words and figures were inserted by s. 2 and Schedule of
Amending Act, 1916 (XIII of 1916).

Accused triable in district where act is done or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of any thing which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(a) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried by X or Z.

(b) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(c) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either by X or Y.

(d) A is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.

Notes—The consequence referred to in this section must be one of the facts to be proved to establish the offence. It must form an integral part of the offence, but must not be a consequence arising from it.

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(a) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Notes—The British Court has no jurisdiction to try the accused for retention of stolen property outside British India, even when the theft is committed within British India. 18 C. W. N. 1178 = 15 Cr. L. J. 527.

181. (1) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is subject of the offence was received or retained by the accused person, or the offence was committed.

*[(3) The offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.]

* This sub-section was substituted by s. 42 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(4) The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

Notes.—Sub-section (2) only applies as between Courts of different local areas whose jurisdictions have been limited under s. 12 of the Code and to which the Code applies. 5 S. L. R. 266=15 Ind. Cas. 802=13 Cr. L. J. 530. The words, “was conveyed” in s. 181 (4) do not import any separate or distinct offence. 121 P. L. R. 1901=1 P. R. 1900 Cr.

Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.

182. When it is uncertain to which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Notes.—If a defamatory letter is posted in Madras with a view of its being used in Tinnevely, the offence of defamation is triable either in Madras or in Tinnevely under s. 179 or 182. 44 M. L. J. 648.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Notes.—Vide 1 C. L. J. 334; 24 Cr. L. J. 579.

184. All offences against the provisions of any law for the time being in force relating to Railways, *
 Offences against Rail- Telegraphs †, the Post Office ‡ or Arms and
 way, Telegraph, Post Ammunition § may be inquired into or tried
 Office and Arms Acts. in a presidency-town whether the offence is
 stated to have been committed within such town or not :

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

|| [185. (1) Whenever a question arises as to which of
 High Court to decide, two or more Courts subordinate to the
 in case of doubt, dis- same High Court ought to inquire into
 trict where inquiry or or try any offence, it shall be decided by that
 trial shall take place. High Court.

(2) Where two or more Courts not subordinate to the same High Court have taken cognizance of the same offence, the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced may direct the trial of such offender to be held in any Court subordinate to it, and if it so decides all other proceedings against such person in respect of such offence shall be discontinued. If such High Court, upon the matter having been brought to its notice, does not so decide, any other High Court, within the local limits of whose appellate criminal jurisdiction such proceedings are pending may give a like direction, and upon its so doing all other such proceedings shall be discontinued].

Notes—"In view of the conflicting decisions in the Indian Law Reports, 44 C 105 and the Indian Law Reports, 43 M 100, it is suggested to m . . .
 tion . . .
 or t . . .
 try a particular case"—*Statement of Objects and Reasons*

* See the Indian Railways Act, 1890 (IX of 1890)

† See the Indian Telegraphs Act, 1885 (XIII of 1885)

‡ See the Indian Post Office Act, 1898 (VI of 1898).

§ See the Indian Arms Act, 1878 (XI of 1878).

|| Section 185 was substituted by s 43 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

186. (1) When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance, before such Magistrate.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

Notes—The High Court has jurisdiction under s. 29, Letters Patent to make an order directing a Magistrate to hold a preliminary investigation and in the event of a *prima facie* case being made out to commit for trial to the Sessions a case which falls within this section. 2 Weir 146 = 1 Weir 789.

Procedure where warrant issued by subordinate Magistrate.

187. (1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District or Sub-divisional Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant or shall be sent to the Magistrate by whom such warrant was issued.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or

tried by any Criminal Court to the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India. 188. When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India, or

when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found.

Provided that

Political Agents to certify fitness of inquiry into charge British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the Local Government shall be required:

Provided, also, that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings

same offence in any territory beyond the limits of British India.

Notes—The obtaining of the certificate of the Political agent, as provided for by this section is a preliminary requisite to the holding of an enquiry in British India of an offence committed outside British India. 24 A. 256 = A. W. N. 1902, 45; see also 19 A. 109, L. B. R. (1872-1892) 334; Rat. Un Cr C. 253. If there is no political agent to a place outside British India, no preliminary sanction as required by this section is necessary. 14 B. 227.

* These words were inserted by s. 44 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Substituted by Act X of 1917.

189. Whenever any such offence as is referred to in section 138 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

B.—Conditions requisite for Initiation of Proceedings.

190. (1) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police-officer;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial.

Notes.—As regards the meaning of the words "take cognizance," vide 17 C. W. N. 795; 19 B. 51; 41 M. 246.

* This clause was substituted by s. 45 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

191. When a Magistrate takes cognizance of an offence under sub-section (1), clause (c), of the preceding section, the accused shall, before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate, be committed to the Court of Session or transferred to another Magistrate.

Transfer or commitment on application of accused.

Notes.—Where a Magistrate takes cognizance of an offence under s. 190 (c), he is bound to take further proceedings under s. 191. 6 C. W. N. 202.

192. (1) Any Chief Presidency Magistrate, District Magistrate or Sub-divisional Magistrate may transfer any case of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.

Transfer of cases by Magistrates.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Notes.—A Magistrate can, under this section, transfer to his subordinate Magistrate only such cases as he has taken cognizance of and not others. 5 O. C. 164. Where a District Magistrate has referred a case for trial to a Sub-Divisional Magistrate, the latter has no power to transfer it to any other Magistrate subordinate to him and any order to this effect is *ultra vires*. 12 A. L. J. 225=36 A. 166=15 Cr. L. J. 406=23 Ind. Cas. 1006.

193. (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Cognizance of offences by Courts of Session.

(2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Local Government by general or special order may direct them to try, or * as the Sessions Judge of

* These words "in the case of Assistant Sessions Judges" omitted by s. 46 of the Code of Criminal Procedure (Amendment) 1923 (XVIII of 1923).

the division, by general or special order, may make over to them for trial.

Notes—By this section, a Sessions Judge can only take cognizance, as a Court of original jurisdiction, of an offence, when the accused has been duly committed. 6 P. W. R. 1913=260 P. L. R., 1913.

Cognizance of offences by High Court. 194. (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the Indian High Courts Act, 1861 † [or the Government of India Act, 1915], or any other provisions of this Code.

(2) (a) Notwithstanding anything in this Code contained, the Advocate General may, with the previous sanction of the Governor General in Council or the Local Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney General may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.

(c) All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.

(d) The High Court may make rules for carrying into effect the provisions of this section.

* See now the Government of India Act, 1915 (5 & 6 Geo. 5, c. 61).

† These words were inserted by s 2 and Schedule of the Amending Act, 1916 (XIII of 1916).

195. *[(1) No Court shall take cognizance—

(a) of any offence punishable under sections 172 to 188 of the Indian Penal Code,† except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate ;

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate ; or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.]

(2) In clauses (b) and (c) of sub-section (1) the term "Court" [includes]‡ a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877§

¶ [(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from

* This sub-section was substituted by s. 47 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† XLV of 1860

‡ This word was substituted for the word "means" by s. 47 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

" " " " " "

after

It =
Procedure (Amendment) Act, 1923 (XVIII of 1923).

Cr. Pro. Code—to

the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whence decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court in which such Court shall be deemed to be subordinate : and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court, according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed].

* [(4)] The provisions of sub-section (1), with reference to the offences named therein, apply also to † [criminal conspiracies to commit such offences and to] the abetment of such offences and attempts to commit them.‡

§[(5)] Where a complaint has been made under sub-section (1), clause (a), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.‡

Notes—Act XVIII of 1923 came into force on the 1st September 1923 and since then the practice of obtaining sanction has been abolished. 11
 (1) ... 81 Ind.
 (2) ... all discre-
 (3) ... Cr. L. J.
 (4) ... member is

196. No Court shall take cognizance of any offence punishable

under Chapter VI [or IXA] of the Indian Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless

† Prosecution for offences against the State.

* The original sub-section (3) was re-numbered (4) by s. 47 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

‡ These words were inserted by s. 4 of the Criminal Law Amendment

of the Indian
 o).

upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf.

Notes.—This section requires that no case under section 124 A. of Penal Code, shall be taken cognizance of except upon complaint made with the authority of the Local Government. 35 C. 141=7 C. L. J. 49=7 Cr. L. J 10=2 M. L. T. 500. A complaint of an offence under Chapter IXA of the I. P. Code requires a sanction under this section. 42 M. L. J. 139=23 Cr. L. J 148. The object of this section is to prevent prosecutions by unauthorised persons for offences mentioned in this section. 22B. 112.

Prosecution for certain classes of criminal conspiracy. * [196A. No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code,

- (1) in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the Governor General in Council, the Local Government or some officer empowered by, the Governor General in Council in this behalf, or
- (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the Local Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government, has, by order in writing, consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provisions of sub-section † [(4)] of section 195 apply, no such consent shall be necessary]

Notes—This section is applicable to a prosecution for conspiracy under section 120B, I. P. Code. 49 C. 573

* This section was inserted by s. 5 of the Criminal Law Act, 1913 (VIII of 1913)

† This figure and brackets were substituted for the figure and "(3)" by s. 48 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

196B. In the case of any offence in respect of which the provisions of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in section 155, sub-section (3).

197. † [(1) When any person who is a Judge within the meaning of section 19 of the Indian Penal Code,† or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Local Government.]

(2) Such Government may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, § (Magistrate) or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Notes—Sanction is only necessary when an offence is committed in the judicial or official capacity. 30 C. 937 ; 7 C. W. N. 750 ; 23 M. 540 ; 3 C. W. N. 539.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code || or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence :

* Section 190B was inserted by s. 49 *ibid.*

† This sub-section was substituted by s. 50, *ibid.*

‡ Act XLV of 1860.

§ This word was inserted by s. 50 of the Code of Criminal Procedure (Amendment) Act, 1913 (XVIII of 1913).

|| XLV of 1860.

* [Provided that, where the person so aggrieved is a woman who, according to the customs and manners, of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf]

Notes.—The brother of the second bigamous husband of the accused is not a "person aggrieved." 25A. 132 This section is intended to prevent Magistrates from requiring into cases coming under sections 493 to 496 unless the husband or some person aggrieved lodges a complaint. 25A. 209

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or in his absence, † [made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed :

‡ Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his behalf]

Notes.—If no complaint is made by any person of an offence under section 498 proceedings can not be initiated on a police charge sheet. 2 Weir 235.

§[199A. When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be

* This proviso was added by s. 51 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

† These words were inserted by s. 52 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

‡ This proviso was added by *ibid.*

§ Section 199A was inserted by s. 53, *ibid.*

given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.]

" Notes.—"We have added a new section 199 A, in order to safeguard the rights of a legally appointed guardian." *Report of the Select Committee.*

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

199. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate.

Provided as follows :—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 ;

† (aa) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties ;

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and "where the complaint is made in writing" need not be reduced to writing ; but the Magistrate may, if he thinks fit, before the matter of

* The words and figures "Subject to the provisions of section 476" were omitted by s. 34, *ibid.*

† This proviso was inserted, by s. 34 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).
‡ Inserted by Act II of 1926.

the complaint is brought before him, require it to be reduced to writing ;

- (c) when the case has been transferred under section 392 and the Magistrate in transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Notes.—The prescribed mode of ascertaining what a complaint is, is to examine the complainant and to reduce his examination to writing. 2 Weir. 237, 10 A. L. J. 79=23 Cr. L. J. 704=16 Ind. Cas. 512. Section 537 does not apply to a non-compliance with the provisions of s. 200 in recording the statement of the complainant 6, C. W. N. 840.

201. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

Procedure by Magistrate not competent to take cognizance of the case.

(2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

Notes.—If the Magistrate has no jurisdiction he can return the complaint with an endorsement to that effect. 27 Cr. L. J. 704.

202. *[(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint :

Postponement for issue of process.

"Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200." †

* This sub-section was substituted by s. 55, 1861d.

† Substituted by Act II of 1926.

*{ (2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.}

†[(2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.]

(3) This section applies also to the police in the towns of Calcutta and Bombay.

Notes.—A Magistrate having jurisdiction to ascertain the truth of the complaint may before issuing the process, under s. 202, take any preliminary steps for finding out whether the complaint is true or not. 6 Bom. L. R. 91. He should examine the complainant and then either he should issue process or make an order under this section. Rat. Un. Cr. 368.

203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, [after considering the statement on oath, (if any) of the complainant and the result of "the investigation" § or inquiry "if any" § under section 202], there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

Notes—This section applies only to cases falling within Chapter XVI when there has been no issue of process. Rat. Un. Cr. C. 544. Where a complaint is dismissed under this section, no fresh proceedings upon a new complaint on the same facts can be taken, unless the order of dismissal is set aside by a competent authority. 28 M. 255.

* This sub-section was substituted by s. 55 of the Code of Criminal Procedure (Amendment) Act, 1921 (XVIII of 1923).

† This sub-section was added by *ibid.*

‡ These words were substituted for the words "after examining the complainant and considering the result of the investigation (if any) made under section 202" by s. 56 *ibid.*

§ Substituted by Act II of 1926.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDING BEFORE

MAGISTRATE.

204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which according to that column a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

(2) Nothing in this section shall be deemed to affect the provisions of section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

Notes—Magistrates should exercise a reasonable discretion under this section, as to whether a warrant or summons should issue in the case of complaints entertained by them. U. B. R. (1892-1896) VII. 131.

205. (1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) If the Magistrate is of opinion that the accused is a person of ill-repute, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Notes—Even in warrant cases a Magistrate can dispense the personal appearance of a *purdah* lady if he issues summons. L. J. 454. Where warrant has been issued personal appearance be dispensed with. 24 Cr. L. J. 872; 18 Cr. L. J. 975; 13 C. W.

CHAPTER XXVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206. (1) * Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, or any Magistrate* [not being a Magistrate of the third class] empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(2) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Notes—The powers conferred under this section convey authority to carry into effect any of the provisions of Chapter XVIII of the Code. 6 A. 477=A. W. N. 1884, 205.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Notes—A commitment once made by a Magistrate could be quashed by the High Court only on a point of law. rr A. L. J. 439=19 Ind. Cas. 560=14 Cr. L. J. 304.

208. (1) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any) and, take in manner hereinafter provided all such evidence as may produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

(2) The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.

* The words and figures "subject to the provisions of section 443," were omitted by s. 9 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words and brackets were inserted by s. 57 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

(3) If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process for production of further evidence, to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(4) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

Notes—An order of commitment to Sessions based on evidence recorded, while the accused was not arrested on the charge at all, is not valid. 2 Weir. 259. A Magistrate inquiring into a case triable by the Court of Sessions is not empowered to frame a charge or make out an order for commitment until after he has taken all such evidence as the accused produces before him in his behalf. 20 A. 264=A. W. N. 1898, 52.

209. (1) When the evidence referred to in section 208, sub-sections (1) and (3), has been taken, and the accused person has (if necessary) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Notes—The words "sufficient ground for committing" mean, not sufficient ground for convicting, but refer to a case in which the evidence is sufficient to put the accused on his trial and such a case arises when credible witnesses make statements which if believed would sustain conviction. 148 P. L. R. 1903.

210. (1) When, upon such evidence being taken and such examination (if any) being made, the Magistrate is satisfied that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with offence the accused is charged.

Charge to be explained, and copy furnished to accused.

(2) As soon as* [such charge] has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

Notes—Magistrates should not add charges apparently for the purpose of enabling them to commit the case to the Court of Session, without any reasonable ground for the addition. 11 Bom. L. R. 18=9 Cr. L. J. 563=1 Ind. Cas. 104.

List of witnesses for defence on trial.

211. (1) The accused shall be required at once to give in orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

(2) The Magistrate may, in his discretion, allow the accused to give in any further list of the witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Notes—A Magistrate is bound to require the accused to give in a list of witnesses he desires to call. It is not enough to put him the question, "Have you any evidence?" since the question is ambiguous and might suggest to the accused only an enquiry as to whether he had witnesses ready in Court. 7 Bom. L. R. 723=2 Cr. L. J. 601.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion summon and examine any witness named in any list given in to him under section 211.

Notes—The discretion given to a Magistrate to commit a case to the Sessions, under s. 147 of the Code of Criminal Procedure, is neither restricted nor taken away merely because he issues summons to the defence witnesses under s. 212. 15 Cr. L. J. 704=26 Ind. Cas. 152.

* These words were substituted for the words "the charge" by s. 58 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

213. (1) When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such lists and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(2) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused.

Notes.—This section gives a committing Magistrate power to cancel a charge when he has heard witnesses for the defence. 2 L. B. R. 140.

214. [Person charged outside presidency-towns jointly with European British subject.] Omitted by s. 10 of Act XII of 1923.

215. A commitment once made under section 213 * by a competent Magistrate † or by a Civil or Revenue Court under section 478, can be quashed by the High Court only, and only on a point of law.

Notes.—Under this section a commitment once made by a competent Magistrate can be quashed by the High Court only, and that only on a point of law. 3 Bom. L. R. 703 ; see also 2 Weir 262. But a commitment to a Court of Sessions cannot be quashed after the accused has been put on his trial and has pleaded to the charge. 9 Cr. L. J. 250=1 S. L. R. 6 Cr.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list, as have not appeared before himself, to appear before the Court to which the accused has been committed :

* The words and figures "or section 214" were omitted by s. 11 of the Criminal Procedure Code, 1908.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly :

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before being so satisfied, detain him as such witness, and may, if he thinks fit, require him to furnish a sufficient security for his appearance at the trial.

Notes.—A Magistrate is not at liberty to refuse to summon witnesses tendered by the accused, except on the grounds specified in this section. 8 C. L. R. 70.

217. (1) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

(2) If any complainant or witness refuses to attend before the Court of Session or High Court, or in case of refusal to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Vide A. W. N. 1883, 37.

218. (1) When the accused is committed for trial, the Magistrate shall issue an order * to such person as may be appointed by the Local Government in this behalf notifying the commitment, and stating the offence in the same form as the charge,

* See Sch. V., Form XXVII, *infra*.

unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge ;

and shall send the charge, the record of the enquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charge, etc., to be forwarded to High Court. English translation to be forwarded to High Court. (2) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

219. (1) * [The committing Magistrate or, in the absence of such Magistrate, any other Magistrate empowered by or under section 206] may, if he thinks fit, summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

(2) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall † be given to the accused free of cost].

Notes.—The committing Court becomes *functus officio* and loses all jurisdiction over the cases after the commitment and special provisions have been made in ss. 216 to 219 to enable the Court to retain jurisdiction only in respect of some matters. 51 C. 980.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, ‡ commit the accused by warrant, to custody.

* These words were substituted for the words " The Magistrate " by s. 60 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words " if the accused so require, be given to him free of cost " by *ibid.*

‡ See Chapter XXXIX, *infra*.

CHAPTER XIX.

OF THE CHARGE.

*Form of Charges.**

Charge to state offence. 221. (1) Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name. (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge. (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge. (6) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Previous conviction when to be set out. (7) If the accused † (having been previously convicted of any offence, is liable, by reason of such previous conviction to enhanced punishment, or to punishment of a different kind, for a

* See Sch. V. Form XXVIII, *infra*

† These words were substituted for the words "has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award," by s. 63 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement* [has been omitted], the Court may add it at any time before sentence is passed.

Illustrations.

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code,† that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300 or that, if it did fall within Exception I, one or other of the three provisos to that exception apply to it.

(b) A is charged, under section 326 of the Indian Penal Code,† with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code,† and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property mark. The charge may state that A committed murder, or cheating, or theft, or extortion or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Indian Penal Code † with, intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Notes—Under this section, if the accused has been previously convicted of an offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction should be stated in the charge. 7 M. L. T. 77.

Particulars as to time, place and person. 222. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which it was committed, as

* These words were substituted for the words "is omitted" by *ibid.*

† XLV of 1860.

are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :

Provided that the time included between the first and last of such dates shall not exceed one year.

Notes—When charges refer to items which extend over a year, the trial is illegal. 17 C. W. N. 479 ; 25 M. 61 P. C.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

..... of the theft of a certain article at a certain time
out the manner in which the theft

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Notes—The question as to whether further particulars are necessary under this section is a question of discretion in each case. 39 C. 781.

Words in charge
taken in sense of law
under which offence is
punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Effect of errors.

Illustrations:

(a) A is charged, under section 242 of the Indian Penal Code,* with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B and A had no means of knowing as to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on :

21st January 1892. In the case of *State v. Dutt*, he was tried for his defence were may infer from this.

Notes.—This section and section 537 would cure any omission that may be as regards particulars of charge required by section 223. 81
Id. Cas. 976.

226. When any person is committed for trial without a charge or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Illustrations.

1. A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted.

2. A is charged with forging a valuable security under section 467 of the Indian Penal Code.* A charge of fabricating false evidence under section 193 may be added.

Notes.—The power to alter any charge should be used with great caution and discretion. 6 C. W. N. 72.

227. (1) Any Court may alter or add to any charge at any time before judgment is pronounced, or in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

(2) Every such alteration or addition shall be read and explained to the accused.

Notes.—The court has power to add a fresh charge upon which the accused has not been committed. 9 A. 525. The words "return of verdict" mean the return of the final verdict which the Judge is bound to record. 8 R. 200.

228 If the charge framed or alteration or addition made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecution in the conduct of the case, the Court may, in its discretion, after such charge or alteration or addition has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

Notes.—The addition or alteration of a charge does not open up the trial from the beginning and the Court may immediately proceed with the trial if it is of opinion that there will be no prejudice to the accused. 1 Pat. 54=3 Pat. L. T. 91=23 Cr. L. J. 146.

229 If the new or altered or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Notes.—Vide 8 B. 200.

230. If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Notes.—Vide 31 P. R. 1919.

231. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.

Notes.—Where the committing Magistrate at a late stage of commitment proceeding altered the charge without giving the an opportunity to re-examine the witnesses for the prosecution produce evidence in his defence relating thereto and committed accused to the Sessions on the altered charge the procedure

Magistrate was entirely illegal and likely to prejudice the accused in his trial before the Court of Sessions. 22 A. L. J. 239.

111 232. (1) If any Appellate Court or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

111 A is convicted of an offence under section 195 of the Indian Penal Code,* upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of charges.

111 233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

Separate charges for distinct offences.

Illustration.

111 A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Notes.—Where one charge was framed in respect of two offences, held for each offence a separate charge should have been framed. 17 C. W. N. 827=20 Ind. Cas. 609=14 Cr. L. J. 449=40 C. 846.

234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, * [whether in respect of the same person or not], he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code † or of any special or local law.

[Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code † shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, † or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.] ‡

Notes.—This section is not limited to cases where the offences have been committed against the person. It applies where the complainants are different persons. 19 C. W. N. 557=16 Cr. L. J. 332=28 Ind. Cas. 668.

235. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

* These words were inserted by s. 63 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† XLV of 1860.

‡ This proviso was added by s. 62 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(3) If several acts, of which one or more than one would by Acts constituting one offence, but constituting when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(4) Nothing contained in this section shall affect the Indian Penal Code, * section 71.

Illustrations

to sub-section (1) —

... in so doing causes ly B was. A may be ions 225 and 333 of

(b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.*

(c) A commits house-breaking by night with intent to commit adultery. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.*

(d) A has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.*

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.*

(g) A with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of Indian Penal Code.*

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm in them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the India Penal Code.*

The separate charges referred to in Illustrations (a) to (h) respectively may be tried at the same time.

to sub-section (2) —

(i) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.*

(j) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.*

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.*

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code.* A may be separately charged with, and convicted of, offences under sections 471 (read with s. 466) and 196 of the same Code.

to sub section (3) —

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.*

Notes—This is an enabling section and does not require the inclusion of all the charges triable under that section, in one trial. 27 Cr. L. J. 1100; 12 Bom. L. R. 226.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Illustrations.

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

Notes—This section only authorizes a charge in the alternative, when it is doubtful which of the several offences the facts which can be proved will constitute, and not when there may be a doubt as to the facts which constitute one of the elements of the offence. 21 C. 955; see also 43 P. R. 1887 Cr.

237. (1) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It is proved that he committed the offence of receiving stolen property. He may be convicted of the offence as the evidence shows.

Notes—This section must necessarily be limited in its operation to cognate offences. 99 Ind. Cas. 861=28 Cr. L. J. 189=A. I. R. 1927

* Sub-section (2) was omitted by s 63 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

Nag. 163. This section lays down an exception to the general rule that a person cannot be convicted of an offence with which he has not been charged. 85 Ind. Cas. 818=26 Cr. L. J. 594=1925 Cal. 903. This section does not apply to a case where the true nature of the offence is not open to reasonable doubt. 2 Welk 301; see also 18 C. L. J. 574=15 Cr. L. J. 41=18 C. W. N. 1276. Under this section an accused may be charged under one section and can be convicted under another. Vide 30 C. W. N. 581=41 C. L. J. 437=88 Ind. Cas. 3=27 Bom. L. R. 707=48 M. L. J. 643=26 Cr. L. J. 1059 (P. C.) This section applies where section 236 applies. 18 C. W. N. 1276; 30 C. W. N. 432; 24 A. L. J. 168; 18 C. L. J. 574; 31 C. W. N. 28.

238. (1) When a person is charged with an offence consisting of several particulars, a combination of some included an offence only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

* [(2A) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.]

(3) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(a) A is charged, under section 404 of the Indian Penal Code,* with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b) A is charged, under section 325 of the Indian Penal Code,† with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of the Code.

Notes—The effect of this section is to invest a jury trying a triable by a jury with authority to find, as an incident to

* This sub-section was inserted by s. 64 *ibid*

† XLV of 1860.

trial, that certain facts only are proved in the trial which facts constitute a minor offence, and return a verdict of guilty of such offence, though it may not be triable by a jury. 26 M. 243=2 Weir. 463=2 Weir 388. The word "minor offence" in this section ought to be taken in their ordinary sense and not in any technical sense. 22 C. 1006. Where the husband is the complainant and brings his complaint under section 366 of the Penal Code, a conviction under section 498 of the Penal Code may properly be had, even in the absence of complaint by the husband under s. 193 Criminal Procedure Code, of an offence under s. 498 of the Penal Code if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction under the graver one. 20 C. 483.

What persons may be charged jointly. * [239. The following persons may be charged and tried together, namely:—

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;
- (c) persons accused of more than one offence of the same kind within the meaning of section 234 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code† or either of those sections in respect of stolen property, the possession of which has been transferred by one offence; and

* Section 239 was substituted by section 65 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† XLV of 1860.

(g) persons accused of any offence under Chapter XII of the Indian Penal Code * relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence ;

and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges.]

Test of same transaction.—Proximity of time, continuity of action and purpose and such subsidiary acts as would make the co-accused *particeps criminis* or an accessory after the fact are the tests to determine whether an offence was committed in the same transaction. 21 S. L. R. 107=98 Ind. Cas. 49 ; 1 S. L. R. 73. Theft and assault cannot be said to form part of the same transaction. 28 Cr. L. J. 357.

240. When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

Notes.—This section applies to cases in which at the same trial more charges than one have been formally drawn up against the same person under the provisions of Chapter XIX of the Code. 10 C. P. L. R. Cr. 1. The permission to withdraw one of the several charges against an accused person allowed by this section only applies to charges against the same accused in the same case and not to separate charges of distinct offences in different cases. Rat. Un. Cr. C. 36a ; see also 9 Cr. L. J. 491=2 Ind. Cas. 128=6 M. L. T. 90. This section applies to cases where more charges than one are made against an accused person. Rat. Un. Cr. C. 186.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in sum- 241. The following procedure shall be
mons-cases, observed by Magistrates in the trial of sum-
mons-cases.

242. When the accused appears or is brought before the
Magistrate, the particulars of the offence of
Substance of accusa- which he is accused shall be stated to him,
tion to be stated. and he shall be asked if he has any cause
to show why he should not be convicted; but it shall not be
necessary to frame a formal charge.

Notes.—The omission to comply with the provisions of this section
is nothing more than a curable irregularity where a failure of justice
has not been caused. 28 Cr. L. J. 511.

243. If the accused admits that he has committed the offence
of which he is accused, his admission shall be
Conviction on admis- recorded as nearly as possible in the words
sion of truth of accusa- used by him; and, if he shows no sufficient
tion. cause why he should not be convicted, the
Magistrate * [may convict] him accordingly.

Notes.—If an accused does not admit that he committed the
offence of which he is accused, the Magistrate cannot convict him
except upon evidence that the accused did commit the offence. L. B.
R. 95.

244. (1) † [If the Magistrate does not convict the accused
under the preceding section, or] if the accused
does not make such admission, the Magis-
Procedure when no such admission is made. trate shall proceed to hear the complainant
(if any), and take all such evidence as may
be produced in support of the prosecution, and also to hear
the accused and take all such evidence as he produces in his
defence :

* These words were substituted for the words "shall convict" by
s. 66 of the Code of Criminal Procedure (Amendment) Act, 1923
(XVIII of 1923).

† These words were inserted by s. 67, *ibid.*

* [Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue † [a summons to any witness directing him to attend or to produce] any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

Notes.—There is no discretionary power given by this section to refuse, in summons cases, to compel the attendance of a witness upon whom the Court has already issued process. 30 C. 121; see also 2 Weir 305.

245. (1) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

‡ (2) Where the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.]]

Notes.—Where a Magistrate dealt with a warrant case as a summons case and acquitted the accused under this section, the order amounted only to one of discharge under s. 253. A. W. N. 1883, 96; see also A. W. N. 1886, 260.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this Chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

* This proviso was added by s. 67 of the Code of Criminal Pro-

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day :

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.

Notes.—This section does not apply to a proceeding under s. 107 of the Code. 31 C. W. N. 388—45 C. L. J. 211—38 Cr. L. J. 479.

248. If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Notes.—This section does not apply to offences punishable with imprisonment exceeding six months. The complainant in such cases cannot withdraw his complaint. Rat. Un. Cr. C. 17.

249. In any case instituted otherwise than upon complaint, a presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused.

Notes.—This section is only applicable to a summons case where it is not instituted upon complaint. 5 Pat. 243—7 P. L. T. 449—27 Cr. L. J. 698 ; see also 1913 P. R. 9. 1 Pat. L. T. 28.

F frivolous Accusations in Summons and Warrant Cases.

250. (1) If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is

heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid]*

*[(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious, may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.]

*[(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.]

*[(2B) when any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply]

*[(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that

(3) A complainant or informant who has been ordered under [sub-section (2)] by a Magistrate of the second or third class to pay

* These sub-sections were substituted for sub-sections (1) and (2) by s. 69 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

† XLV of 1860.

‡ This word and figure were substituted for the word and "sub-section (1)" by s. 69 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

compensation * [or has been ordered by any other Magistrate to pay compensation exceeding fifty rupees] may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate. †

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided ‡ [and where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order]. ‡

Notes—An order under this section can be passed against an Ex-cise sub-Inspector on whose report criminal proceedings were instituted against the accused. 54 C. 37=28 Cr. L. J. 316. The object of this section is not to punish the complainant, but to award by a summary order some compensation to the person against whom a frivolous or

When a criminal case is compounded a Magistrate cannot allow compensation to the accused under this section. 30 P. R. 1910=197 P. L. R. 1910=8 Ind. Cas. 387=11 Cr. L. J. 638=44 P. W. R. 1910.

In awarding compensation to the accused under this section, it should appear that the case was instituted by the complainant, or upon information given to a Police officer or to a Magistrate. 1911, 2 M. W. N. 558=10 M. L. T. 550=13 Ind. Cas. 221=22 M. L. J. 138=13 Cr. L. J. 29.

* These words were substituted for the words "to an accused person" by *ibid.*

† These words were added by *ibid.*

‡ Sub-section (5) was omitted by *ibid.*

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant cases.
Evidence for
as may be produced in support of the prosecution :

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

252. (1) When the accused is examined, the Magistrate shall examine the witnesses for the prosecution, and shall examine the accused, and shall examine the witnesses for the defence, and shall examine the witnesses for the prosecution, and shall examine the witnesses for the defence, and shall examine the witnesses for the prosecution, and shall examine the witnesses for the defence.

* [Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.]

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon † to give evidence before himself such of them as he thinks necessary.

Notes—Where a complainant files a list of witnesses to be summoned for proving his case, the Magistrate should see which of the persons desired to be summoned are necessary witnesses. 14 Cr. L. J. 682=21 Ind. Cas. 1002=12 A. L. J. 15.

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary he finds that no case against the accused has been made out which, if un rebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Notes—It is competent to a Magistrate to discharge the accused after examining some only of the prosecution witnesses. 12 Cr. L. J. 105=9

* This proviso added by s. 70 *ibid.*
† See Sch. V. Form XXXI, *infra.*

M. L. T. 302=52 Cr. L. J. 558=5911 M. W. N. 149. A discharge under

627.

254. * If, when such evidence and examination have been taken Charge to be framed and made, or at any previous stage of the when offence appears case, the Magistrate is of opinion that there is proved, ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

¹ Notes—This section requires a charge to be framed when a Magistrate after taking evidence, is of opinion that there is ground for presuming that the accused has committed the offence. 2 P. R. 1906=3 Cr. L. J. 1845=37 P. L. R. 1906.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Notes—This section requires a Magistrate to record the accused's plea immediately after the charge is framed. 4 Cr. L. J. 471.

† [255A In a case where a previous conviction is charged under the provisions of section 221, sub-section (1) and the accused does not admit that he has been previously convicted as alleged in the said accused take evidence in record a finding thereon.]

* See ss. 252 and 253, *supra*.

† Section 255A was inserted by s. 71 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

256. (1) If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state Defence. * [at the commencement of the next bearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith], whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination if any, they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

Notes—The provisions of this section do not relate to the mode of trial, and non-compliance with them strictly amounts to no more than an irregularity in procedure. 49 A 316—35 A L J 111=99 Ind. Cas 1039. This section does not prohibit cross-examination before a charge. at C. 642. The word "recall" does not mean "re-summon." 8 A. L. J. 707=11 Ind. Cas. 1007.

257. (1) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing :

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.

(2) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

* These words were inserted by s. 72, *ibid.*

discretion
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defeating the ends of justice. 26 B. 418=4 Bom. L. R. 30, 1 C. W. N. 789=6 Cr. L. J. 1; 2 L. B. R. 27n; 10 Cr. L. J. 207=2 S. L. R. 5 Cr. An accused has a right to have the prosecution witnesses re-summoed even though they had been summoned previously and had not attended. 28 P. R. 1884 Cr. It is open to a Magistrate, even after a case has been closed and at any time before judgment has been pronounced, to give an opportunity to the accused to cross examine the witness for the prosecution and to examine witnesses in defence, even if the accused has been found guilty. 1897. 1
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14 Bm

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1897.
ary.

258. (1) If in any case under this Chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction. * [(2) Where in any case under this Chapter the Magistrate does not proceed in accordance with the provisions of section 349 or section 562, he shall, if he finds the accused guilty, pass sentence upon him according to law.]†

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, † (or his discretion, 7 time before

Absence of complainant.

Notes—Where a Magistrate has passed an order discharging the accused under s. 259, his order is no bar to a retrial of the case on a fresh complaint. 28 M. 310. In a warrant case, when the Magistrate

* This sub-section was substituted by s. 73 of the Code of Criminal Procedure (Amendment) Act, 1973 (XVIII of 1973).

† See Sch. V. Form. XXIX, *infra*.

‡ These words were inserted by s. 74 of the Code of Criminal Procedure (Amendment) Act, 1973 (XVIII of 1973).

arrives at the stage to which s. 254 applies, it is his duty to frame a charge, and he should not discharge the accused under s. 259 merely because the complainant was absent on the day of hearing. Rat. Un. Cr. C. 847 = Cr. Rg. 14 of 1896.

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to
marily. try sum-

260. (1) Notwithstanding anything contained in this Code,—

- (a) the District Magistrate,
- (b) any Magistrate of the first class specially empowered in this behalf by the Local Government, and
- (c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the Local Government,

may, if he or they think fit, try in a summary way all or any of the following offences,—

- (a) offences not punishable with death, transportation or imprisonment for a term exceeding six months ;
- (b) offences relating to weights and measures under sections 264, 265 and 266 of the Indian Penal Code ;
- (c) hurt, under section 323 of the same Code ;
- (d) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;
- (e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed fifty rupees ;
- (f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed fifty rupees ;

- (g) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees ;
- (h) mischief, under section 427 of the same Code ;
- (i) house-trespass, under section 448, and offences under sections 451, * [453, 454], 456 and 457 of the same Code ;
- (j) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code ;
- (k) abetment of any of the foregoing offences ;
- (l) an attempt to commit any of the foregoing offences, when such attempt is an offence ;
- (m) offences under section 20 of the Cattle-trespass Act, 1871 ;

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.

NOTE.—An error in the summary trial (1897-1901) is an error in the Act, is an error in the W. N. 1901.

24. The offence of cattle lifting is a serious one and ought not to be tried summarily. 6 S. L. R. 101=17 Ind. Cas. 412=13 Cr. L. J. 780. This section gives the Magistrate a power to try summarily all cases not punishable with death, transportation or imprisonment for a term, exceeding six months, and there is nothing in law to restrict the Magistrate exercising such powers in cases under the Companies Act.—11 A. L. J. 126=15 Ind. Cas. 665=14 Cr. L. J. 105=35 A. 173.

Power to invest Bench
of Magistrates invested
with less power.

26x. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class, power to try summarily all or any of the following offences :—

* These figures were inserted by the Repealing and Amending Act, 1903 (I of 1903), see Part II of the Second Schedule.

- (a) offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, * [477 and 504] ;
- (b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month † [with or without fine] ;
- (c) abetment of any of the foregoing offences ;
- (d) an attempt to commit any of the foregoing offences, when such attempt is an offence

Procedure for summons and warrant cases applicable.

262. (1) In trials under this Chapter, the procedure prescribed for summons-cases, shall be followed in summons-cases, and the procedure prescribed for warrant-cases, shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment. (2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

Notes—In summary trial the procedure laid down for warrant-cases, should be followed in warrant cases. Vide 21 Cr. L. J. 630—1 P. L. T. 652 ; 22 Cr. L. J. 271.

Record in cases where there is no appeal

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge ; but he or they shall enter, in such form as the Local Government may direct, the following particulars :—

- (a) the serial number ;
- (b) the date of the commission of the offence ;
- (c) the date of the report or complaint ;
- (d) the name of the complainant (if any) ;

* These figures and word were substituted for the word and " and 447 " by s 75 of the Code of Criminal Procedure Act, 1923 (XVIII of 1923).

† These words were added by *ibid.*

- (e) the name, parentage and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved and in cases coming under clause (d), clause (e), clause (f) or clause (g) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed.
- (g) the plea of the accused and his examination (if any) ;
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor ;
- (i) the sentence or other final order ; and
- (j) the date on which the proceedings terminated.

Notes.—In the case of a summary trial, the provisions of this section must be fully and strictly complied with, in this sense, that the record must be sufficiently exact and sufficiently full to enable the Judges of the Revisional Court to say whether the law has been complied with or not on the points to be recorded. 2 C. L. J. 565=10 C. W. N. 79=3 Cr. L. J. 178. A summary trial applies only to short and simple cases where little evidence is needed. 25 W. R. Cr. 65. This section excuses a Magistrate trying a criminal case according to the summary procedure from recording evidence of any of the witnesses, but not from hearing the evidence of all the witnesses. 16 C. W. N. 984=39 C. 931=17 Ind. Cas. 71=13 Cr. L. J. 759. This section does not give the Magistrate any discretion whether he will examine the accused or not. 15 Cr. L. J. 190=22 Ind. Cas. 766=18 C. W. N. 1247=41 C. 743.

Under section 263 (b), a brief statement of the reasons for conviction must be given. The reasons should amount to showing that there is evidence to prove the existence of the ingredients necessary to complete the offence. 10 A. L. J. 251=16 Ind. Cas. 516=13 Cr. L. J. 708.

264. (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263

(2) Such judgment shall be the only record in cases coming within this section.

Notes—Under this section Magistrates need not record the substance of depositions ; but may state generally the substance of the witnesses' evidence. 25 W. R. Cr. 6.

265. (1) Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

(2) The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) If no such authorization be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

(4) If the Bench differ in opinion, any dissentient member may write a separate judgment.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A—Preliminary.

266. In this Chapter, except in sections 276 and 307, and in Chapter XVIII, the expressions "High Court" means a High Court of Judicature established* under the Indian High Courts Act, 1861, † ‡ [or the Government

* The words "or to be established" were omitted by s. 2. and Schedule of the Amending Act, 1916 (XIII of 1916).

† See now the Government of India Act, 1915 (5 & 6 Geo. 5, c. 91).

‡ These words and figures were inserted by s. 2 and Schedule Amending Act, 1916 (XIII of 1916).

of India Act, 1915], and includes * [the Chief (Courts of Oudh and Siod)†] [the § "Court of the Judicial Commissioners, of the Central Provinces," ‡ and ¶ ** such other Courts as the Governor-General in Council may, by notification in the Gazette of India, declare to be High Courts for the purposes of this Chapter †† [and of Chapter XVIII].

Trials before High Court to be by jury. 267. All trials under this Chapter before a High Court shall be by jury,

and notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the Indian High Courts Act, 1861, †† §§ the Government of India Act, 1915,] the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors. 268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Notes.—As regards difference between trial by jury and trial by assessors vide 27 C. 295; 24 M 523, 43A. 125.

269. (1) The Local Government may, [§] by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction, revoke or alter such order.

the Criminal Law Amend-

jab" were repealed by the 1919).

by s. 3 and Sch. II of the Repealing and Amending Act, 1913 (XI of 1913).

** Certain word here omitted by Act XXXII of 1915.

†† These words and figures were added by s. 76 of the Code of Criminal

" c. 61).
ule of the

§ The words "with the previous sanction of the Governor-General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXIII of 1920).

(2) The Local Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made to him or of his own motion so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.

Notes—As regards the meaning of “class of offences” Vide. 23 M. 632.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Notes—The provisions contained in this section is merely directory, 1887 P. R. 35.

B.—Commencement of Proceedings.

271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Notes—This section only says that “the plea shall be recorded, and he may be convicted thereon.” A judge is quite at liberty to continue the trial even after such plea. 23 M 151=2 Weir 335. Where an accused makes a long rambling statement more or less admitting guilt, it is safer for the Judge to record a plea of not guilty and to proceed to try the case in the ordinary way, recording the evidence 5 A. L. J 157=7 Cr. L. J 295. An accused should never be called on to plead in the alternative, but separately to each of the heads of a Rat. Un. Cr. C. 327. If the accused pleads guilty on a charge, should be recorded. Where no such plea appears on record, the conviction is bad, and must be set aside and a new trial ordered on the

5 M. L. T. 216=4 Ind. Cas. 1126=11 Cr. L. J. 193. A plea of guilty should not be accepted in capital cases. 169 P. L. R. 1905=54 P. R. 1905=3 Cr. L. J. 80.

Refusal to plea or
claim to be tried.

Trial by same jury or assessors of several offenders in succession.

Notes—When the accused who is asked to plead, keeps silent, an enquiry should be made as to whether he is obstinately so or *ex visitatione* *die*. In either case, a plea of not guilty is not to be recorded. Rat. Un. Cr. C. 19.

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Notes—Under this section, in trials before the High Court, when it appears to the Court, at any time before the commencement of the trial of a person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make an entry to that effect. 21 C. 97.

C.—Choosing a Jury.

Number of jury. 274. (1) In trials before the High Court the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session the jury shall consist of such uneven number as the Lord Justice Clerk may direct, but not less than nine, as the Local Authority may direct.

* This word was substituted for the word "three" by s. 13 of the Criminal Law Amendment Act, 1923 (XII of 1923).

* Provided that, where any accused person is charged with an offence punishable with death, the jury shall consist of not less than seven persons and, if practicable, of nine persons.]

Notes.—The number fixed by the Local Government must be adhered to. 26 A. 21.

†[275. (1) In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans and, in the case of an Indian British subject, of Indians.

(2) In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans.

Notes.—Such claim must be made before a committing Magistrate. 29 C. W. N. 384—26 Cr. L. J. 385.

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct.

Jurors to be chosen by lot.

Provided that—

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed ;

Existing practice maintained ;

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present :

persons not summoned when eligible ;

* This proviso was added by *ibid*
† Section 275 was substituted by s. 24, *ibid*

thirdly, * [in a trial before any High Court in the trials before special jury, which is the usual place of sitting of such High Court]—

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed; and

fourthly, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

Notes.—The Legislature has taken special precautions to render impossible any intentional selection of jurors to try a particular case. In the first place, the persons who are to be summoned to act upon the jury are drawn by lot; and then again, when they appear, the jurors who are to try a particular case are chosen in the same manner from amongst the persons summoned. 7 C. W. N. 188. Jurors are judges of fact, and in the absence of a properly constituted jury, conviction is illegal. A violation of the imperative procedure laid down in s. 276 is such as cannot be cured by the provisions of s. 537 of the Code. 9 Ind. Cas. 278-8. A. L. J. 182=12 Cr. L. J. 46-33 A. 385.

Names of jurors to be called. 277. (1) As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he

objects to be tried by such juror.

(2) Objection may be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

* These words were substituted for the words "in the presidency towns" by s. 77 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

Notes.—Where instead of choosing jurors by lot as required by s. 276 and when without hearing and deciding objections as provided by ss. 276-279, the Judge proceeded at once to exempt some of the persons present merely on their own representation and tried the accused with the rest, the procedure is very irregular and cannot be cured by s. 537. 7 C. W. N. 188.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed—

- (a) some presumed or actual partiality in the juror ;
- (b) some personal grounds, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years ;
- (c) his having by habit or religious vows relinquished all care of worldly affairs ;
- (d) his holding any office in or under the Court ;
- (e) his executing any duties of police or being entrusted with police duties ;
- (f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury ;
- (g) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted the language in which it is interpreted ;
- (h) any other circumstances which, in the opinion of the Court, render him improper as a juror.

279. (1) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

(2) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury :

(2) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors.

Notes.—Where the incompetency of an assessor is discovered at the close of the trial, there should be a new trial. 2 Weir 340. Where the Sessions Judge allowed one of the assessors to absent himself for one of the days during which the trial proceeded, and to return on the following day, *held* that the procedure was contrary to the intention of ss. 285, 295, Cr. Pro. Code. The Judge ought either not to have given leave or should have adjourned till a day when both the assessors could attend. Rat. Un. Cr. C. 695; see also 8 C. P. L. R. Cr. 9; but see 24 M. 523=2 Weir. 340.

•[DD—Joint trials.]

* 285A. In any case in which an European or American is accused jointly with a person not being an Indian British subject or European or American, and such European, Indian British subject or American is committed for trial before a Court of Session, he and such other person may be tried together, but if he requires to be tried in accordance with the provisions of section 275 or section 284A and is so tried, and the other person accused requires to be tried separately, such other person shall be tried separately, in accordance with the provisions of this Chapter.]

E.—Trial to Close of Cases for Prosecution and Defence.

286. (1) When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

(2) The prosecutor shall then examine his witnesses.

* This heading and section 285A were inserted by s. 17 of the Criminal Law Amendment Act, 1923 (XII of 1923).

Notes.—It is extremely objectionable in a Sessions trial, to read to the prosecution witnesses their depositions before the committing Magistrate and to ask if what was there recorded was true or not. 2 Weir. 360 ; see also 9 M. 83.

Examination of accused before Magistrate to be evidence.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence *

Notes.—The phrase "committing Magistrate" in s. 287 and s. 288 is merely a compendious way of referring to the Magistrate or Magistrates, who held the preliminary inquiry on which the commitment was made. 3 M. L. T. 25—7 Cr. L. J. 29—31 M. 40.

288. The evidence of a witness † [duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case ‡ (for all purposes subject to the provisions of the Indian Evidence Act, 1872]

Evidence given at preliminary inquiry—admissible.

Notes—This section does not extend to Courts of Magistrates nor to depositions not taken in the presence of the accused. It is a section requiring very careful use by Courts of Sessions, and its real scope is explained in 11 B. H. C. 281. Such statements may be recorded after cross-examination upon them of the witnesses who made them, which would reveal discrepancies, or used under s 145 Evidence Act, as a basis for cross-examination. Rat. Uo. Cr C 728—Cr. Rg 56 of 1894. This section does not limit the production of the evidence given before the committing Magistrate only for the purpose of contradicting the witness at the Sessions trial. 24 M. 414—2 Weir 377 This section was never intended to be used so as to enable a Court trying a case to take a witness's deposition bodily from the Magistrate's record and treat it as evidence before itself. 21 A. 155—A. W. N. 1898, 196.

Procedure after examination of witnesses for prosecution.

adduce evidence.

289 (1) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to

* See the Indian Evidence Act, 1872 (1 of 1872), s. 80.

† These words and figures were substituted for the words "duly taken in the presence of the accused before the committing Magistrate" by s. 78 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ These words and figures were added by *ibid.*

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

Nntes.—Examination of witnesses on the spot is illegal. 5 W. R. 59

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Nntes.—When defence witnesses are absent, though summoned, the Court should adjourn the case. 4 Bom. L. R. 939 ; see also 15 W. R. 34 ; 18 W. R. 20.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day ; and subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F—Conclusion of Trial in Cases tried by Jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Nntes.—A clear and complete statement of facts should appear in the charge to the jury. 2 Weir 285. Under this section the Judge is bound to sum up the evidence for the defence as well as for the prosecution, this being essential for a proper charge. Rat. Un. Ct. C. 720. It is highly important that in a charge of murder the Judge should discuss evidence fully. 19 B 741. Under this section the Judge is bound to lay down the law by which the jury are to be guided. 6 C W. N. 292—29 C. 379.

Duty of Judge.

298 (1) In such cases it is the duty of the Judge—

- (a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties ; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties ;
- (b) to decide upon the meaning and construction of all documents given in evidence at the trial ;
- (c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given ;
- (d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(a) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Notes—It is the duty of the Judge under this section to see that evidence which is not admissible in itself should not be allowed to the prejudice of the accused, though no objection is taken by the accused. 26 C. 736=2 C. W. N. 484.

Duty of jury,

299. It is the duty of the jury

- (a) to decide which view of the facts is true and then the verdict which under such view ought, according to the direction of the Judge, to be returned ;

- (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not ;
- (c) to decide all questions which according to law are to be deemed questions of fact ;
- (d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide and to tell them under what view of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true and whether A is guilty of murder or of culpable homicide. If the Judge, whether or not he directs the jury, tells them that he does not agree with them,

(b) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Notes—A Judge is not entitled to ask the jury the reason for their verdict: 13 Cr. L. J. 586=15 Ind. Cas. 2002.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.
Retirement to consider verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Notes—After the charge the jury should retire to consider their verdict. 26 Cr. L. J. 261 ; see also 4. C. 723=51 C. W. N. 167=18 Cr. L. J. 311. They should not be allowed to speak with outsiders. 44 C. 723 ; 46 C. 207 ; 10 L. W. 379 ; 25 C. W. N. 240 ;

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Delivery of verdict.

Notes.—No specific form is necessary. 14 W. R. 59 The word "verdict" means the entire verdict 22 C. 377. Verdict means the collective opinion of the jury 36 M. 585.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Procedure where jury differ.

Notes.—Where the jury are not unanimous, the Judge can ask them to reconsider the verdict. But such requirement must be before the actual delivery of the verdict. 15 Cr. L. J. 678 ; 36 M. 585 ; 19 B. 735 ; 28 B. 412.

303. (1) Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Verdict to be given on each charge.
Judge may question jury.

(2) Such questions and the answers to them shall be recorded.

Questions and answers to be recorded.

Notes.—The verdict must be given on each charge. Vide 22 C. 377 ; 50 C. 658. Where the verdict of the jury is ambiguous the Judge can question them as regards the verdict. 20 B. 215 ; 15 B. 452 ; 21 C. 955 ; 32 C. 759.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Amending verdict.

Notes.—As to when such amendment is allowed vide, 22 M. L. J. 355 — 13 Cr. L. J. 285 ; 28 Bom. 412 ; 6 P. R. 1973 (F. B.).

305. (1) When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with opinion.

Verdict in High Court when so prevail.

(2) When in any such case the jury are satisfied that not be unanimous, but six of them are of one opinion, the shall so inform the Judge.

Discharge of jury in other cases. (3) If the Judge disagrees with the majority, he shall at once discharge the jury.

(4) If there are not so many, as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Notes—In case of unanimous verdict the Judge is bound by the verdict of the jury, 16 Cr. L. J. 676 : 25 Cr. L. J. 428.

306. (1) When in a case tried before the Court of Session the Verdict in Court of Judge does not think it necessary to express Session when to prevail. disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall, *unless he proceeds in occurrence with the provisions of section 562, pass sentence on him according to law.

Notes—Vide 18 C. W. N. 580 = 15 Cr. L. J. 402 = 41 C. 754.

307. (1) If in any such case the Judge disagrees with the Procedure where Ses- verdict of the jurors, or of a majority of sions Judge disagrees the jurors, on all or any of the charges on with verdict. which † [any accused person] has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case ‡ [in respect of such accused person] to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, §[and in such case, if the accused is further charged under the provisions of section 307, shall proceed to try him on such charge as if such verdict had been one of conviction.]

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which ||[such accused] has been tried, but he may either remand ||[such accused] to custody or admit him to bail.

* These words and figures were inserted by s. 80 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

† These words were substituted for the words "the accused" by s. 81 *ibid.*

‡ These words were inserted by *ibid.*

§ These words and figures were added by *ibid.*

|| These words were substituted for the words "the accused" by *ibid.*

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict * [such accused] of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

Notes—In a case where the Sessions Judge thinks that the verdict of the jury is contrary to the weight of evidence, it is the duty of the Court to set aside the verdict and order a new trial. *High*

Court exercises in hearing a case submitted to it under this section is not original jurisdiction in any sense, the hearing not having any of the essentials of an original trial. 29 C. 286—6 C. W. N. 254 (R. B.). In a case under this section the High Court should give due weight to the opinion of the jury as well as that of the Judge. 17 C. W. N. 1077—14 Cr. L. J. 556—21 Ind. Cas. 156.

G.—Re-trial of Accused after Discharge of Jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury unless the judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.—Conclusion of Trial in Cases tried with Assessors.

309. (1) When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally † (on all the charges on which the accused has been tried), and shall record such opinion,† and for that purpose ask the assessors such questions as are necessary to ascertain w

* These words were substituted for the words "the accused" by

† These words were inserted by s. 82 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Discharge of jury in other cases. (3) If the Judge disagrees with the majority, he shall at once discharge the jury.

(4) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Notes—In case of unanimous verdict the Judge is bound by the verdict of the jury, 16 Cr. L. J. 676 : 25 Cr. L. J. 428.

306. (1) When in a case tried before the Court of Session the Judge does not think it necessary to express a verdict when to prevail. disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall, *{unless he proceeds in accordance with the provisions of section 562, } pass sentence on him according to law.

Notes—Vide 18 C. W. N. 580—15 Cr. L. J. 402—41 C. 754.

307. (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which † [any accused person] has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case ‡ [in respect of such accused person] to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, §[and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction.]

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which ¶[such accused] has been tried, but he may either remand ¶[such accused] to custody or admit him to bail.

* These words and figures were inserted by s. 80 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

† These words were substituted for the words "the accused" by s. 81 *ibid.*

‡ These words were inserted by *ibid.*

§ These words and figures were added by *ibid.*

¶ These words were substituted for the words "the accused" by *ibid.*

313. Notwithstanding anything in the last foregoing section,
 evidence of the previous conviction may
 When evidence of previous conviction may be given.
 be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.*

Notes—In a trial of offence under Ss. 395 and 402 of the Indian Penal Code, the evidence of previous conviction is not permissible under section 54 of the Evidence Act, no evidence having been previously offered of the accused's good character. Nor does sections 6 or 14 of the said Act make the evidence admissible. 5 P. L. J. 706; see also 14 C. 751; 27 C. 139; 1 C. W. N. 146.

*J.—List of Jurors for High Court, and summoning Jurors;
 for that Court.*

Number of special jurors.

Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed.]

List of common and special jurors.

313. (1) The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

- (a) a list of all persons liable to serve as common jurors; or
- (b) a list of persons liable to serve as special jurors only.

(2) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(3) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

* I of 1872.

† Section 313 was substituted by s. 28 of the Criminal Law Amendment Act, 1923 (XII of 1923).

(4) The Governor General in Council [or the Local Government] in the case of the High Court at Fort William in Bengal, and in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

(5) The Clerk of the Crown shall, subject to such rules as Discretion of officer aforesaid, have full discretion to prepare the preparing lists. said list as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

314. (1) Preliminary lists of persons liable to serve as common jurors and as special jurors respectively, Publication of lists, preliminary and revised, signed by the Clerk of the Crown shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

(2) Revised lists of persons liable to serve as common jurors, and special jurors, respectively, signed, as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

(3) Copies of the said lists shall be affixed to some conspicuous part of the court house.

315. (1) Out of the persons named in the revised lists aforesaid, there shall be summoned for each session † (in the town which is the usual place of sitting of each High Court), ‡ [as many of those who are liable to serve on special or common juries respectively as the Clerk of the Crown considers necessary.]

(2) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

(3) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

* These words were inserted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII) of 1920.

† These words were substituted for the words "in each presidency-town" by s. 84 of the Code of Criminal Procedure (Amendment) Act, 1921 (XVIII of 1921).

‡ These words were substituted for the words "at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries," by *ibid.* s. 84.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the *
Summoning jurors outside the place of sitting of High Courts. [town ... such ...
 Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Sessions,

317. (1) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks
Military jurors. needful, after communication with the Commanding Officer cause to be summoned such number of commissioned and non commissioned officers in Her Majesty's Army "or Air force" † resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid

(2) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent "official" duty, or for any other special official ‡ reason.

318. Any person summoned under section 315, section 316 or section 317, who, without lawful excuse,
Failure of jurors to attend. fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment for a term not exceeding six months in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

* These words were substituted for the words "presidency-towns" by s. 85, *ibid.*

† Added by Act X of 1927.

‡ Substituted by Act X of 1927.

K—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

319. All male persons between the ages of twenty one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside, or, if the Local Government, on consideration of local circumstances, has fixed any smaller area in this behalf within the area so fixed

Exemptions. 320 The following persons are exempt from liability to serve as jurors or assessors, namely :—

- (a) officers in civil employ superior in rank to a District Magistrate ;
- “(aa) members of either chamber of the Indian Legislature and members of a Legislative Council constituted under the Government of India Act”*
- (b) salaried Judges ;
- (c) Commissioners and Collectors of Revenue or Customs ;
- (d) police officers and persons engaged in the preventive Service in the Customs Department ;
- (e) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty ;
- (f) persons actually officiating as priests or ministers of their respective religions ;
- (g) persons in Her Majesty's Army “or Air Force”, † except when, by any law in force for the time being, they are specially made liable to serve as Jurors or assessors ;
- (h) surgeons and others who openly and constantly practise the medical profession ;
- (i) legal practitioners, (as defined by the Legal Practitioners Act 1879), ‡ in actual practice ;

* Added by Act 23 of 1925.

† Inserted by Act X of 1927.

‡ XVIII of 1879.

(j) person employed in the Post-Office and Telegraph Departments ,

(k) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 649 and 641 ; *

(l) other persons exempted by the Local Government from liability to serve as jurors or assessors.

321. (1) The Sessions Judge, and the Collector of the district or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Session Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (b) to (k) , both inclusive.

(2) The list shall contain the name, place of abode and quality or business of every such person ; and, if the person is an European , or an American, the list shall mention the race to which he belongs.

Notes—As regards who should be chosen as jurors and assessors, vide 1897 A W N 167 ; 23 W. R. 35 , Ratanlal, 304.

322 Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the court-houses of the District Magistrate and of the District Court, and extracts therefrom in some conspicuous place in the town or towns in or near which the persons named in the extract reside.

323. To every such copy or extract shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court house, and at a time to be mentioned in the notice.

324. (1) For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice revise the list and hear the

* See Now the Code of Civil Procedure 1908 (V. of 1908).

objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror, or as an assessor or who may establish his right to any exemption from service given by section 320 and insert the name of any person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the Session Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

(4) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under the section shall be deemed to be waived until the list is next revised.

(6) The list so prepared and revised shall be again revised once in every year.

Annual revision of list.

(7) The list so revised shall be deemed a new list and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

325. In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge and the Collector of the district or other officer as aforesaid shall prepare, in addition to the ordinary list, a special list of persons, including the persons named in the ordinary list, who are, in the opinion of the Sessions Judge or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors. Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

326. (1) The Sessions Judge shall ordinarily, seven days at least before the day which he may from time to time fix for holding the sessions, send a District Magistrate to summon jurors and assessors letter to the District Magistrate requesting him to summon as many persons named in the said revised list* or the said special list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial † [and including, where any accused person is an European or an American, as many Europeans or Americans as may be required for the purpose of choosing jurors or assessors for the trial.]

(2) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months, unless the number cannot be made up without them ; and the names so drawn shall be specified in the said letter.

‡ (3) Where the accused requires and is entitled to be tried under the provisions of section 275, there shall be chosen by lot, in the manner prescribed by or under section 276, from the whole number of persons returned the jurors who are to constitute the jury until a jury containing the proper number of Europeans or Europeans and Americans or of Indians, as the case may be, has been obtained ;

Provided that, in any case in which the proper number of Europeans or Americans cannot otherwise be obtained, the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.]

§ (4) Where, under the provision to sub section (3), the Court proposes to summon as a juror any person in his Majesty's Army, the provisions of section 317 shall apply in like manner as they apply for the purpose of the summoning of military jurors for a trial under section 316.]

* See Sch. V, Forms XXXII and XXXIII, respectively, *infra*.

† These words were added by s. 19 of the Criminal Law Amendment Act, 1923 (XII of 1923)

‡ These sub-sections were added by s. 19 of the Criminal Law Amendment Act, 1923 (XII of 1923.)

Notes—Jurors and assessors should be called on the first day of the session by the District Magistrate. Vide 7 C. W. N 188; 17 Cr. L. J. 17.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of juror or assessor for a whole session oppressive or whenever for other reason such direction is found to be necessary.

328. Every summons * to a juror or assessor shall be in writing and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

329. When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears on the representation of the head of the office in which he is employed that he cannot serve as a juror or assessor, as the case may be without inconvenience to the public.

330. (1) The Court of Sessions may for reasonable cause excuse any juror or assessor from attendance at any particular session.

(2) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

331. (1) At each session the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

(2) such list shall be kept with the list of the jurors and assessors as revised under section 324.

(3) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

* See Sch. V. From XXXII and XXXIII respectively, *infra*.

332 (1) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court, after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

(2) Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

(3) For good cause shown, the Court may remit or reduce any fine so imposed,

(4) In default of recovery of the fine by attachment and sale, such juror or assessor may by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

Notes—When a summons is served properly, a juror can be convicted for non-attendance. Vide 1 C W N 116 (Notes), 6 C W. N. 887.

L—Special Provisions for High Courts.

333 At any stage of any trial before a High Court under this Code, before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Notes—
Vide, 2
41 C 10
89 Ind

Time of holding sittings. 334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

335. (1) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

(2) But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

336. [*Place of trial of European British subjects.*] Omitted by s. 20 of Act XII of 1923.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. * [(1) In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code† namely sections 216A, 369, 401, 435 and 477A, the District Magistrate, a Presidency Magistrate, a Sub divisional Magistrate or any Magistrate of the first class - may, at any stage of the investigation or inquiry into, or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned

* Sub-sections (1) and (1A) were substituted for sub-section (1) by 85 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† XLV of 1860.

in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof :

Provided that where the offence is under inquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the inquiry or holding the trial, and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be inquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof]

* (1A) Every Magistrate who tenders a pardon under sub-section (1) shall record his reasons for so doing, and shall, on application made by the accused furnish him with a copy of such record :

Provided that the accused shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.]

(2) Every person accepting a tender under this section shall be examined as a witness in † [the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.]

‡ (2A) In every case where a person has accepted a tender of pardon and has been examined under sub-section (2), the Magis-

tr or High Court, as the case may be]

(3) Such person,§[unless he is already on bail], shall be detained in custody until the termination of the trial. ¶ ¶

* See the foot-note on p. 192, supra

† These words were substituted for the words "the case" by s. 86 of the Code of Criminal Procedure (Amendment Act, 1923 (XVIII of 1923)).

‡ This sub-section was added by *ibid*

§ These words were substituted for the words "if not on bail" by *ibid*.

¶ The words "by the Court of Session or High Court, as the case may be" were omitted by *ibid*

¶ Sub-section (4) of section 337 was omitted by s. 86 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Scope—All that this section requires is that there should be an investigation in progress regarding an offence triable exclusively by the High Court or Court of Session and which is an offence punishable with imprisonment which may extend to ten years. 88 Ind. Cas. 283—26 Cr. L. J. 1115—1925 Nag. 337. Where a pardon is tendered with regard to an offence triable exclusively by the Sessions Court, the fact that there may be other offences alleged or charged which are not triable is immaterial or will not invalidate a pardon granted in respect of the offence exclusively triable by the Sessions Court. The approver is an approver with regard to the whole case and not as regards some of the accused only. 26 Cr. L. J. 1045—87 Ind. Cas 965. This section does not require that a trial or an enquiry should be in progress when the pardon is tendered. Thus a Magistrate can tender pardon after adjourning the case. 7 L. R 197. This section does not deprive the Magistrate of the power of granting bail to an approver. The Court has got power to grant bail, but the power must sparingly exercised. 101 Ind Cas 439—A. I.R. 1927 Sind 175. This section which is a special section dealing with approvers controls the general section 498 and consequently no power is given here to grant bail to an approver. *ibid*

Sub-section 2 (A)—What this sub-section means is that whenever an approver is examined, the Magistrate has no jurisdiction to proceed with the trial but must commit the accused to the Sessions. It does not mean that the approver should be committed for trial along with the accused. 12 O. L. J. 542—2 O W N 464—88 Ind Cas 736—26 Cr. L. J 1216—A I R 1925 Oudh. 472 A Magistrate specially empowered was trying a case, in which the prosecution evidence included the approver. After evidence was closed and before judgment was delivered, the amended Act came into force and under s 337 (2A) as there was an approver in the case, it could be tried only by a Court of Sessions. *Held*, that under s. 347, the duty of the Magistrate was to commit the accused to the Sessions and not proceed with the case. The illegality was not one curable under s. 537. 26 Cr. L. J. 549—85 Ind Cas. 645—A I R 1923 Lah 378

Sub-section (3)—Sub-section (3) contemplates only a case where there has been a commitment made by the Magistrate to the Court of Session or the High Court. It omits to consider the case where the

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338. At any time after commitment. but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any

Power to direct tender of pardon,

such offence, tender, or under the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Notes—As to who can tender pardon, vide 33 C. 1353, 10 C. W. N. 847 6 W. R. Cr 5, 10 M 356. Where a Sessions Judge offered a pardon to one of the accused persons, examined him as a witness, against the others and then revoked the pardon and tried and convicted him, *held*, that the procedure was altogether irregular. A. W. N. 1882, 31.

339. (1) Where a pardon has been tendered under section 337 or section 338, and **[the Public Prosecutor certifies that in his opinion] any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, † [such person may be] tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter ;*

‡ *[Provided that such person shall not be tried jointly with any of the other accused, and that he shall be entitled to plead at such trial that he has complied with the conditions upon which such tender was made ; in which case it shall be for the prosecution to prove that such conditions have not been complied with*

(2) The statement made by a person who has accepted a tender of pardon may be given in evidence against him § *[at such trial.]*

(3) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court

Notes—Where a person who has been tendered a pardon has not fulfilled the conditions upon which he was pardoned, the Sessions Judge is competent to order his commitment 76 Ind Cas 185=25 Cr 1 J 121=1924 Lah 568 Where a pardon is tendered on the usual conditions and in giving evidence at the trial material discrepancies are introduced into the evidence with the intention of benefiting the accused, there is a forfeiture of the pardon by giving false evidence 91 Ind Cas 253=27

* These words were inserted by s 87, *ibid*

+ These words were substituted for the words "he may be" by *ibid*.

‡ This proviso was added by *ibid*

§ These words were substituted for the words "when the pardon has been forfeited under this section" by *ibid*,

Cr. I. J. 77 It is open to an accused who has accepted pardon to resile from it and claim to be tried. If he does it before he is treated as an approver and put into the box, there is no illegality in his being tried along with the other accused. The acceptance of pardon must continue in force till he actually gives evidence and then only will the applicability of this section arise. 1923 M. W. N. 697=18 L. W. 607=33-M. L. T. (P. C.) 156=43 M. L. J. 613 The absence of a Public Prosecutor's certificate under this section is not necessarily a fatal defect. 3 Rang. 55=4 Bur. L. J. 23=A. I. R. 1925 Rang. 219 An accused was granted a pardon under s. 339 (1) and the Magistrate recorded on oath in a preliminary examination

Held, the preliminary examination basis of the same sanction for perjury could not be granted. The proper procedure would be to produce evidence against him under s. 339 (1) 3 Rang. 224=89 Ind. Cas. 708=26 Cr. L. J. 1396=A. I. R. 1925 Rang. 226 A valid pardon once given is not in any way affected by subsequent proceedings in the case. Even where the offence for which the accused are tried is an offence triable exclusively by a Magistrate, the offence is still triable exclusively by a Magistrate.

Procedure in trial of person under section 339. * (339A) (1) The Court trying under section 339 a person who has accepted a tender of pardon shall—

(a) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under section 271, sub-section (1), and

(b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury, or the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

Notes.—Where the accused was not asked in the manner provided in the section but was asked whether he had fulfilled the conditions on which a pardon has been granted and had given true evidence. Held there was no proper compliance with the section 5 Lah. 379

* Section 339A was inserted by s. 88, *ibid.*

Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

*[340 (1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) Any person against whom proceedings are instituted in any such Court under section 107 or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.]

Notes—This section extends to the case not only of a person accused of an offence in a Criminal Court but to the case of any person against whom proceedings are instituted under the Code in any Court, 50 B. 741. A suspect is as much if not more, entitled as a matter of right as any other person accused of a substantive offence to have a reasonable opportunity afforded to him of defending himself 96 l. C. 391.

341. If the accused, though not insane, cannot be made to understand, the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Notes—Where the jury find and the Sessions Judge agrees with the jury that the accused is able to follow the proceedings in Court and to understand the same, it is the duty of the Sessions Judge to convict the accused of the offence with which he is charged and to pass a sentence on him in accordance with law. He should not report to the High Court that the accused was not capable of making defence in Court. 97 Ind. Cas 361=27 Cr L J 1097=7 L R 138 Cr Where a deaf and dumb accused was found guilty of an attempt to commit suicide and at the trial made certain signs indicating his guilt, the High Court affirmed the conviction and sentenced the accused to a day's imprisonment. 25 Bom L R 43=A. I R 1923 Bom. 194, see also 9 C. where it is shown that L R 371 This second of the trial and then in follows It does not empower a Magistrate to make the report in the middle of a trial, 4 Bom. L R. 825, see also Rat Un Cr C 836, 2. Weir. 403 In submitting

* Section 340 was substituted by section 89 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Cr. I. J. 77. It is open to an accused who has accepted pardon to resile from it and claim to be tried. If he does it before he is treated as an approver and put into the box, there is no illegality in his being tried along with the other accused. The acceptance of pardon must continue in force till he actually gives evidence and then only will the applicability of this section arise. 1921 M. W. N. 697=18 L. W. 607=33-M. L. T. (H. C.) 156=41 M. L. J. 613. The absence of a Public Prosecutor's certificate under this section is not necessarily a fatal defect. 3 Rang. 55=4 Bur. L. J. 23=A. 1 R. 1925 Rang. 219. An accused was granted a pardon under s. 330 (1) and the Magistrate recorded on oath in a preliminary examination certain statements. In the committal Court he resiled from the statements. Held, the preliminary examination was not justified by law and on the basis of the same sanction for perjury should not be granted. The proper procedure would be to produce evidence against him under s. 339 (1). 3 Rang. 224=89 Ind. Cas. 708=26 Cr. L. J. 1396=A. 1 R. 1925 Rang. 240. A valid pardon once given is not in any way affected by subsequent proceedings in the case. Even where the offence for which the accused are tried and convicted is not an offence triable exclusively by a Court of Sessions, the evidence of an approver is still admissible when the pardon given was in respect of an offence triable exclusively by a Court of Sessions. A. 1 R. 1925 Sind. 105.

Procedure in trial of person under section 339. * {339A (1) The Court trying under section 339 a person who has accepted a tender of pardon shall—

- (a) if the Court is a High Court or Court of Session, before the charge is read out and explained to the accused under section 271, sub-section (1), and
- (b) if the Court is the Court of a Magistrate, before the evidence of the witnesses for the prosecution is taken,

ask the accused whether he pleads that he has complied with the conditions on which the tender of the pardon was made.

(2) If the accused does so plead, the Court shall record the plea and proceed with the trial, and the jury, or the Court with the aid of the assessors, or the Magistrate, as the case may be, shall, before judgment is passed in the case, find whether or not the accused has complied with the conditions of the pardon, and, if it is found that he has so complied, the Court shall, notwithstanding anything contained in this Code, pass judgment of acquittal.

Notes — Where the accused was not asked in the manner provided in the section but was asked whether he had fulfilled the conditions on which a pardon has been granted and had given true evidence. Held there was no proper compliance with the section. 5 Lah. 379.

* Section 339A was inserted by s. 88, *ibid*

Right of person against whom proceedings are instituted to be defended and his competency to be a witness.

*[34n (1) Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.

(2) Any person against whom proceeding are instituted in any such Court under section 107 or under Chapter X, Chapter XI, Chapter XII or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceeding.]

Notes—This section extends to the case not only of a person accused of an offence in a Criminal Court but to the case of any person against whom proceedings are instituted under the Code in any Court 50 B. 741. A suspect is as much if not more, entitled as a matter of right as any other person accused of a substantive offence to have a reasonable opportunity afforded to him of defending himself 96 I. C. 391.

34r. If the accused, though not insane, cannot be made to understand, the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Procedure where accused does not understand proceedings.

Notes—Where the jury find and the Sessions Judge agrees with the jury that the accused is able to follow the proceedings in Court and to understand the same, it is the duty of the Sessions Judge to convict the accused of the offence with which he is charged and to pass a sentence on him in accordance with law. He should not report to the High Court that the accused was not capable of making defence in Court. 97 Ind. Cas. 361=27 Cr. L. J. 1097=7 L. R. 138 Cr. Where a deaf and dumb accused was found guilty of an attempt to commit suicide and at the trial made certain signs indicating his guilt, the High Court affirmed the conviction and sentenced the accused to a day's imprisonment. 25 Bom. L. R. 43=A. I. R. 1923 Bom. 194, see also 9 C. B. & D. 28 C. 111. It is not shown that

his sec-
and then
does not
4 Bom.

L. R. 825, see also Rat. Un. Cr. C. 836, 2 Weir 403. In submitting

* Section 340 was substituted by section 89 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

... this section, the Magistrate must state
 lumb accused in the commission of the
 regarding the previous history and
 must also be a finding whether the
 accused was capable of understanding and did in fact understand the
 nature of the proceedings, and whether he understood the purport of
 the evidence given by the witnesses, and whether he wanted to call
 witnesses, in his defence. Rat. Un. Cr. 696—Cr. Rg. 26 of 1894.

342. (1) For the purpose of enabling the accused to explain
 any circumstances appearing in the evidence
 against him, the Court may, at any stage of
 any inquiry or trial without previously war-
 Power to examine the accused.
 ne Court considers
 uestion him general-
 tion have been exa-

(2) The accused shall not render himself liable to punishment
 by refusing to answer such questions, or by giving false answers to
 them; but the Court and the jury (if any) may draw such inference
 from such refusal or answers as it thinks just

(3) The answers given by the accused may be taken into con-
 sideration in such inquiry or trial, and put in evidence for or against
 him in any other inquiry into, or trial for, any other offence which
 such answers may tend to show he has committed.

(4) No oath shall be administered to the accused.

Notes.—The language of this section is mandatory, and the
 omission to comply with its provisions is not a mere error of form.
 2 Weir. 405 This section says that the Court should question the
 accused generally on the case before he is called on for his
 defence, for the purpose of enabling him to explain any circumstan-
 ces appearing in the evidence against him U B K (1892-1896)
 Vol 1, 144. This section permits an examination of the accused to be
 made solely for the purpose of enabling the accused to explain facts
 appearing against him. 7 C. W. N. 345, 14 A. 242=A. W. N. 1892.
 83. The object of this section is not fill up a gap in the evidence
 of the prosecution, but to enable the prisoner to explain any circum-
 stances appearing in the evidence against him. 26 C. 49 It is not
 for the purpose of ascertaining what witnesses the accused intends to
 call, or what evidence they will give, or what his defence is that a
 Court is justified or authorised in examining an accused under this
 section. 14 A. 242. By "accused" is meant a person over whom the
 Magistrate or other Court is exercising jurisdiction. 16 L. 661. A
 Judge examining a prisoner, under this section ought not to cross-
 examine him; the only permissible questions are such as will enable

the prisoner to explain any circumstances appearing in the evidence against him. 10 C. 140=13 C. L. R. 358, see also 1 C. L. R. 436; 6 C. L. R. 431. A retrial should be ordered for substantial non-compliance 38 C. L. J. 175. Omission to comply with this section vitiates the trial where the accused is prejudiced thereby 20 A. J. J. 874; 45 A. 124. Non-compliance under this section is not cured by s. 537, 28 C. W. N. 119=38 C. L. J. 281, see also 50 C. 518, 51 C. 223; 50 B. 34, 1 P. R. 1918, 5 P. L. J. 430; 4 Lah. J. J. 270, 7 P. L. T. 259.

343. Except as provided in sections 337, and 338, no influence by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

344 (1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Power to postpone or adjourn proceedings

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Remand.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Explanation.—If sufficient evidence has been adduced to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained, this is a reasonable cause for a remand.

Reasonable cause for remand.

with regard to the offence which the accused is alleged to have committed, it is desirable that the Courts, namely the Magistrate and the District Court, should exercise the power conferred by section 344 of the Code of Criminal Procedure, 1898, and stay the criminal proceedings ought to be stayed pending disposal of the civil suit. 26 Cr. L. J. 1485=A. I. R. 1926 All. 30. Where a Magistrate is of opinion that a party before him is unnecessarily wasting time and procuring adjournment for bringing the case on, it is desirable that a Magistrate should be paid by complainant if the accused is not present on the date and an adjournment is necessary in order to procure the absentee accused. 27 Cr. L. J. 572=94 Ind. Cas. 140=A. I. R. 1926 Lah. 407. Under this section a Subdivisional Magistrate can only adjourn a case from time to time but has no power to stay proceedings in his own Court. 39 M. L. T. 103=1927 M. W. N. 694=104 Ind. Cas. 625=28 Cr. L. J. 849. The High Court will not ordinarily interfere if the Court refusing to act under this section has exercised a judicial discretion. 50 M. 839=104 Ind. Cas. 252=28 Cr. L. J. 812=A. I. R. 1927 Mad. 778.

345. (1) The offences punishable under the sections of the Indian Penal Code [specified]* in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:—

Offence.	Sections of Indian Penal Code applicable.	Persons by whom offence may be compounded
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully retaining or confining any person.	341, 342	The person retained or confined.

* This word was substituted for the word "described" by s. 9 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ...	447	The person in possession of the property trespassed upon.
House trespass ...	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery ...	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	
Defamation ...	500	The person defamed.
Printing or engraving matter, knowing it to be defamatory	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years	506	The person intimidated.
* [Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

* This entry was added by s. 90 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

* (2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table :—

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	Ditto.
Voluntarily causing grievous hurt too grave and sudden provocation.	335	Ditto.
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	The person to whom hurt is caused.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	Ditto.
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining a person in secret.	346	Ditto.
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound by law or by legal contract, to protect.	418	Ditto.

* This sub-section was substituted for sub-section (2) by *1894*.

Offence.	Sections of the Indian Penal Code applicable.	Persons by whom offence may be compounded.
Cheating by personation ...	410	The person cheated.
Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	420	Ditto.
Mischief by injury to work of Irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person.	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.
Knowingly selling, or exposing or possessing for sale or for trade or manufacturing purpose, goods marked with a counterfeited trade or property mark.	486	Ditto.
Marrying again during the life-time of a husband or wife	494	The husband or wife of the person so marrying.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman	509	The woman whom it is intended to insult or whose privacy is intruded upon.

(3) When any offence is compoundable under this section, the abettment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is * [under the age of eighteen years or is] an idiot or a lunatic, any person competent to contract on his behalf may † [with the permission of the Court] compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

‡[(5A) A High Court acting in the exercise of its powers of revision under section 439 may allow any person to compound any offence which he is competent to compound under this section].

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused § [with whom the offence has been compounded].

(7) No offence shall be compounded except as provided by this section.

Notes—Where the parties to a compoundable offence compound it under this section and produce a writing signed by them before the Court, the Court is bound to act upon it, and is not at liberty to call upon the parties to prove that the case has been compounded. 16 Bom. L. R. 939—26 Ind. Cas. 1000—16 Cr. L. J. 88. ; but see 19 Ind. Cas. 948. Under Ss. 170 and 63 of the Code of Criminal Procedure, a Police officer is not empowered to compound. U. B. R. (1892—1896) in which appeals are pending in Court. Cases which come before the appellate Court in revision cannot

* These words were substituted for the words "a minor" by s. 90 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by s. 90 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ Sub-section (5A) was inserted by *ibid.*

§ These words were added by *ibid.*

be compounded. 13 A. L. J. 104=37A. 127=16 Cr. L. J. 247=28 Ind. Cas. 103. ; but see 27 P. L. R. 235; 73 Ind. Cas. 334: see also sub-section (5A.) The composition of a compoundable offence has the effect of an acquittal. The complainant cannot afterwards draw back from the compromise or deny it. 81 Ind. Cas. 346=25 Cr. L. J. 810. The compounding of an offence with one or more of several accused persons has not the effect of acquittal in respect of the remaining accused between whom and the complainant no composition has been arrived at. 94 Ind. Cas. 144=27 Cr. L. J. 576=7 Lah. 354=27 P. L. R. 493. An offence of wrongful restraint is compoundable by the person restrained even prior to a complaint. 49 A. 484=25 A. L. J. 396=101 Ind. Cas. 671=28 Cr. L. J. 495=A. I. R. 1927 All. 375. Any person may set the criminal law in motion, but it is only the person specified in this section who can compound the offence. 51 B. 512=29 Bom. L. R. 718=102 Ind. Cas. 549=28 Cr. L. J. 58=A. I. R. 1927 Mad. 410. Where an accused is charged under sections 335 and 147 I. P. Code, and the former charge is compounded, the charge under s. 147 does not *ipso facto* lapse. 26 Cr. L. J. 686=86 Ind. Cas. 62=26 P. L. R. 35=A. I. R. 1925 Lah. 464. Under s. 345 (5A) as amended, a High Court in revision may allow any person to compound any offence which he is competent to compound under this section. 21 A. L. J. 838.

346. (1) If, in the course of an inquiry or a trial before a Ma-

Procedure of provincial Magistrate in cases which he cannot dispose of.

gistrate in any district outside the presidency towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate, to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Notes—Where a second class Magistrate submits a case under section 346 of the Criminal Procedure Code to the Subdivisional Magistrate considering it to be beyond his own jurisdiction, the latter cannot return it on the ground that he had already passed an order that it was only a second class case. He is bound to dispose of the case in one of the ways prescribed by the section. Rat. Un. Cr. C 554. A Subordinate Magistrate must refer immediately to a superior Court, in which there is reason to believe that an offence beyond his own jurisdiction has been committed, and must be careful to avoid taking notice of a major offence as a minor. U. B. R. (1897-1901) Vol. A commitment made to the Sessions by a Magistrate acting un-

power conferred by section 347 is not restricted to cases in which the accused has not examined *de hoc* :
 Magistrate who submits the case to the Court of Session or High Court.
 To the case of an accused under section 532 has no application.
 "Evidence" in this section means all facts and statements which have been disclosed by enquiry and is not restricted to dispositions recorded by the Magistrate. 100 Ind. Cas. 992=28 Cr. L. J. 384=A. I. R. 1927 Mad 591. Where a case is submitted by a Sub-Magistrate to a Sub-Divisional Magistrate under this section his jurisdiction determines. 69 Ind. Cas. 438=23 Cr. L. J. 710. Where a Magistrate to whom a case is referred under this section passes orders on the evidence taken by the Magistrate who was not competent to try the case, he cannot be considered to be trying the case himself. 72 Ind. Cas. 525.

347. (1) If in an inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, Procedure when, after it appears to him at any stage of the proceedings commencement of an inquiry or trial, Magistrate finds case should be committed, and if he is empowered to commit for trial, he shall commit the accused under the provisions hereinafter contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Notes—The special power to commit to a Sessions Court, conferred on a Magistrate by this section, cannot be interpreted as depriving the accused of the benefit of the procedure prescribed in Chs XVIII of the Code. 15 Cr. L. J. 366. The accused can exercise his right of cross-examination before the enquiring Magistrate in a case triable by the Court of Sessions. 16 C. L. J. 45=13 Cr. L. J. 688.

Trial of persons previously convicted of offences. [348. (1)] Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, shall [if the Magistrate before whom the case is pending is satisfied that there are sufficient grounds for committing the accused] be committed to

* The words "stop further proceedings and" were omitted by s. 91, *ibid.*

† Renumbered by s. 92, *ibid.*

‡ These words were inserted by s. 92 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

the Court of Session or High Court, as the case may be, unless the Magistrate * [is competent to try the case and] is of opinion that he can himself pass an adequate sentence if the accused is convicted :

Provided that, if † [any Magistrate in the district] has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.

‡ [(2) When any person is committed to the Court of Session or High Court under sub-section (1), any other person accused jointly with him in the same inquiry or trial shall be similarly committed, unless the Magistrate discharges such other person under section 209].

Notes.—Old offenders should ordinarily be charged before a first class Magistrate, a Weir, 422. The provisions of this section are subject to the express provision of s. 30. When the accused is an old offender, a Magistrate may commit him to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate, and himself pass an adequate sentence.

349. (1) Whenever a Magistrate of the second or third class,

Procedure when a Magistrate cannot pass a sentence sufficiently severe.

ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

§ [(IA) When more accused than one are being tried together and the Magistrate considers it necessary to proceed under sub-section (1) in regard to any of such accused, he shall forward all the accused who are in his opinion guilty to the District Magistrate or Sub-divisional Magistrate].

* These words were substituted for the words "before whom the proceedings are pending" by *ibid*.

† These words were substituted for the words "the District Magistrate" by *ibid*.

‡ Sub-section (2) was added by *ibid*.

§ This sub-section was inserted by s. 93 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(2) The Magistrate 'in' whom the 'proceedings' are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law :

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Notes.—A Sub-divisional Magistrate, to whom a case is sent, under section 349, cannot return a judgment, but may commit the case to the Sessions and the committal order of the Sub-divisional Magistrate. Rat. Un. Cr. C. 222 ; see also section 349.

ment, has no power to send the case to the Sessions. 4 M. 233 ; 36 M. 16 ; 2 Cr. L. J. 464. A Magistrate, under s. 349, the whole case with according to his discretion. Rat. Un. Cr. C. 222 ; see also section 349, on a ground not specified.

350. (1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself ; or he may re-summon the witnesses and recommence the inquiry or trial :

Provided as follows :—

- (a) In any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard ;
- (b) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by

the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Nothing in this section applies to cases in which proceedings have been stayed under section 346 * [or in which proceedings have been submitted to a superior Magistrate under section 349].

† [(3) When a case is transferred under the provisions of this section, all proceedings commenced in the Court from which the case is transferred shall be deemed to have been commenced in the Court to which the case is transferred, and shall be deemed to have succeeded by the Court to which the case is transferred.]

Notes.—This section is intended to provide for a case where an enquiry is held by a Magistrate and the accused is found guilty, but the Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

the witnesses and recommence the enquiry or trial. But he cannot do both. The accused may demand the witnesses or any of them to be re-summoned and he may demand that the witnesses be re-examined.

646=15 Cr. L. J. 673=25 Ind. Cas 1007. The provisions of this section apply to all cases in which cases are transferred for whatever reasons.

* These words and figures were added by s. 93 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was added by *ibid.*

from the file of one Magistrate to that of another. 12 C. W. N. 416-35 C. 457-7 C. L. J. 488. This section is applicable where the case is transferred from one Magistrate to another. 32 M. 218; 35 C. 457; 20 C. 870; 3 A. 365.

* [350A. No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change of Bench in any case in which the Bench by which such order or judgment is passed is duly constituted, under sections 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings.]

Notes.—Where of three Bench Magistrates one alone was present throughout the proceedings, no conviction order can be passed by such a Magistrate. 27 Cr. L. J. 463-7 Lah. 122-A. I. R. 1926 Lah. 304.

351. (1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard.

Notes.—This section applies to investigations preliminary to commitment for a subsequent trial and not to cases where the trial is actually being proceeded with. 14 W. R. Cr. 20. The Court cannot proceed under this section where the accused is not in attendance to his Court. 12 Cr. L. J. 92-9 Ind. Cas. 492-5 S. L. R. 2. This section is self-contained and complete in itself and quite independent of the provisions of s. 191, and necessity of s. 191 of the Code. 5 N. L. R. 113-3 Ind. Cas. 668-10 Cr. L. J. 303. A Magistrate taking cognizance of an offence against a witness in a case, disclosed by the evidence of another witness, does so under s. 191 clause C, and not under s. 351 Cr. Pro. Code. 1 C. W. N. 105. This section empowers a Court to hold as a co-accused any person attending his Court, who seems to him

to be implicated in the case under trial. 4 S. L. R. 258=11 Ind. Cas. 583.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Provided that presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

Notes.—Trial in jail is not invalid. 1017 P. W. R. 21. As regards exclusion of police officers, *vide* 26 Cr. L. J. 1130 ; 1885 A. W. N. 221.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Notes.—Recording evidence behind the back of a party is illegal. 5 Cr. R. 132. The evidence must be recorded in the presence of the accused. Rat. Un. Cr. C. 24 ; see also a N. W. P. 49 ; 14 Cr. L. J. 287 ; A. I. R. 1918 Pat. 691 ; 28 Cr. L. J. 771. It is irregular to import into a case the evidence of a witness who has merely pending over B. R. all the 14 Cr. L. J. 287.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Sessions Judge, the evidence of the Manner of recording evidence outside presidency towns. shall be recorded in the

355. (1) In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned in sub-section (1) of section 260, clauses (b) to (m), both inclusive, when tried by a Magistrate of the first or second class, and in all proceedings under section 514 (if not in the course of

Record in summons-cases and in trials of certain offences by first and second class Magistrates.

a trial), the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

(2) Such memorandum shall be written and signed, by the Magistrate with his own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record.

Notes.—This section applies to all cases and other cases.

Record in other cases outside presidency-towns. evidence Weir. 2
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 Weir. 432.

356. (1) In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence and shall be signed by the Magistrate or Sessions Judge.

(2) Where the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of

Evidence given in English

such evidence in the language of the Court shall form part of the record.

* [(2A) When the evidence of such witness is given in any other language, not being English, than the language of the Court, the

language of the Court or in English shall form part of the record.]

(3) In cases in which the evidence is not taken down in writing Memorandum when by the Magistrate or Sessions Judge, he shall, evidence not taken as the examination of each witness proceeds down by the Magistrate or Judge himself, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

NOTE: A defect in the original manuscript has been corrected.

rule contained in the 1st clause is the taking down in writing of the evidence of each witness and not the taking down in writing of the same in the language of the Court, as is shewn by the provisions of s. 357 of the Code, under which, if the Local Government so directs, the evidence may be taken down in the mother-tongue of the Judge in English. 6 O. C. 73.

357. (1) The Local Government may direct that in any district Language of record of or part of a district, or in proceedings before evidence. any Court of Session, or before any Magistrate or class of Magistrates the evidence of each witness shall be taken down in writing in the language of the Court.

taking down the evidence of any witness, in which case he shall record the reason of his inability to do so and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language or in the language of the Court, although such language is not his mother-tongue.

Notes—By the mere fact that the evidence as recorded by a Sessions Judge may not be presented to the witnesses the completion of the accused

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

359. (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

360. (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance or of his pleader if he appears by pleader and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence, the Magistrate or Sessions Judge, make a memorandum by the witness, and shall add

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

Notes—This section directs that the evidence of such witness should be read over to him in the presence of the accused, and the accused can not pay attention to it, if the evidence of the next witness is proceeded with. 2 Weir 435. Reading it over in the verandah, by a Court in view of the accused and his pleader is not sufficient. 4 B. R. 1912, 1st Qr. 123. Handing over the record to the witness for reading it is not proper. 18 C. W. N. 1242=15 Cr. L. J. 483=24 Ind. Cas. 571; 42 C. 240; 52 C. 431; 29 C. W. N. 526. The provision of this section is obligatory and not merely mandatory. 42 C. 957; 36 C. 955; 28 C. W. N. 119; 28 C. W. N. 968; 52 C. 159; 5 Pat. 63. But mere non-compliance with the provisions of this section does not vitiate the trial; 31 C. W. N. 271 P. C.; 27 Cr. L. J. 484. A witness can not be convicted for perjury when his deposition is not read over to him in the presence of the accused or his pleader as required by this section. 12 C. W. N. 845; 23 Cr. L. J. 125; 41 M.

46 C. L. J. 368.

361. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Notes—If the evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

Record of evidence
in Presidency Magis-
trates' Courts.

36a. (1) In every case* [tried by a Presidency Magistrate in which an appeal lies, such Magistrate] shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

(2) Evidence so taken down shall ordinarily be recorded in the form of a narrative but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

†[(2A) In every case referred to in sub-section (1), the Magistrate shall make a memorandum of the substance of the examination of the accused. Such memorandum shall be signed by the Magistrate with his own hand, and shall form part of the record.]

(3) Sentences ‡ [unless they are sentences of imprisonment ordered to run concurrently] passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

§[(4) In cases other than those specified in sub-section (1), it shall not be necessary for a Presidency Magistrate to record the evidence or frame a charge] :

warrant cases, except where he may impose a fine exceeding two hundred rupees or imprisonment for a term exceeding six months. 33 C. 1036=4 C. L. J. 408=4 Cr. L. J. 368. When a Presidency Magistrate sentences an accused person to imprisonment for more than six months, he is bound to record evidence of witnesses, even though the sentence is imposed for the purpose of detention of the accused in the reformatory. 26 Bom. L. R. 1232.

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363. When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Notes—The judge may note the demeanour of a witness. 2 Weir 435 ; 125 P. L. R. 1914—15 Cr. L. J. 203 ; 29 C. W. N. 316 = 85 Ind. Cas. 708.

364. (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter * † (or the Chief Court of Oudh) ‡ the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English : and such record shall be shown or read to him, or if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add in his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound § as the examination proceeds to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language ; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

* The words " or the Chief Court of the Punjab " were repealed by

§ d by s. 3
23).

1923 (XXXVII of 1923).

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263* [or in the course of a trial held by a Presidency Magistrate].

Notes—A Magistrate when he is examining a prisoner or asking him whether he pleads guilty or not, should refrain from assuming that he is guilty of the crime with which he is charged. The proper mode is to tell the prisoner that he is charged with a certain offence and ask him if he has any explanation to give, and whether he wishes to make any statement. 2 Welr. 438. In examining an accused person under this section, it is improper to ask him such a question as, "If you did not commit the murder, who did it." 7 O. C. 191. All that a Court has the right to do under this section is to ask the accused person to explain the circumstances which appear in evidence against him. 15 C. L. J. 323=14 Ind. Cas. 667=13 Cr. L. J. 283. The procedure indicated by clause (2) involves the Magistrate's offering the record for the accused's signature but it does not empower the Magistrate to require his signature. 4 Cr. L. J. 205=3 L. B. R. 199. Where the Magistrate instead of asking separate questions to the accused puts him a long

Record of evidence in 365. Every High Court established by Royal Charter † [and the Chief Court of Oudh] ‡ § § 11 shall from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court,** [and the evidence shall be taken down in accordance with such rule].

* These words were substituted by s. 2 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923), for the words and figures "or section 362, sub-section (2A)" which were in-

the Courts Act,
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repealed by the

by s. 2 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923).
Code

Judges
thereof in

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment. 366. (1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained,—

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands :

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

Notes.—This section only imposes a condition that the judgment should be pronounced in open Court and imposes a few other conditions, but such conditions do not include the condition that the record should not be a mere form, that the substance of the judgment is pronounced. T. 317=25 M. L. J. 446= before writing reasons for the judgment is not permitted by ss. 366 or 367, and amounts to an irregularity. 12 Ind. Cas. 986=5 S. L. R. 131=12 Cr. L. J. 610. A sentence is illegal where there is no written judgment when it is passed. 14 A. 242=A. W. N. 1892, 83.

367. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court * [or from the dictation of such presiding officer] in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it † [and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him].

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

(3) When the conviction is under the Indian Penal Code, and judgment is alternative, it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed;

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

* [(6) For the purposes of this section, an order under section 118 or section 123, sub-section (3), shall be deemed to be a judgment.]

Notes.—Under this section it is not necessary that the presiding officer of the Court who wrote the judgment, should be the same person

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* These words were inserted by s. 100 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were added by *ibid.*

98 Ind. Cas. 716=27 Cr. L. J. 1404=A. I. R. 1927 Nag. 88.

Clause (5)—If an accused is convicted of an offence punishable with death and the sentence of death is not passed, the reason as to why the Court has not passed the sentence of death should be given as required by s. 367 (5) 105 Ind. Cas. 804=4 O. W. N. 977.

368. (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation. (2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.

369. * [Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court established by Royal Charter, by the Letters Patent of such High Court, no Court], when it has signed its judgment, shall alter or review the same, except † to correct a clerical error.

Notes.—No Magistrate can add to or alter the proceedings or judgment in any case after they are signed and published. 10 C. W. N. 1062=4 Cr. L. J. 210=4 C. L. J. 415; 23 B. 50; 26 Cr. L. J. 1289; 1916 P. R. 25; 19 Cr. L. J. 225; 12 Bom. L. R. 521. A Court has no jurisdiction in review or revise its own orders. 1 O. W. N. 891.

370. Instead of recording a judgment in manner herein-before provided, a Presidency Magistrate shall record the following particulars.

- (a) the serial number of the case,
- (b) the date of the commission of the offence,

* These words were substituted for the words "No Court other than a High Court" by s. 101, *ibid.*

† The words and figures "as provided in sections 395 and 484 were omitted by s. 101 of the Code of Criminal Act, 1923 (XVIII of 1923). :

- (c) the name of the complainant (if any);
 (d) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;
 (e) the offence complained of or proved;
 (f) the plea of the accused and his examination (if any);
 (g) the final order;
 (h) the date of such order; and
 (i) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Notes.—Although s. 370 allows a Presidency Magistrate to record merely the reasons for a conviction, instead of recording a judgment this must be done in such a manner that the High Court, in revision, may be in a position to judge whether there were sufficient materials before him to support the conviction. 8 C. W. N. 587. This section requires that the Presidency Magistrate should instead of recording a judgment, record certain particulars and in case of conviction and sentence of imprisonment or fine exceeding Rs. 200, a brief statement of the reasons for the conviction. 30 C. W. N. 981=97 Ind. Cas. 651=27 Cr. L. J. 1131=A. I. R. 1926 Cal. 1109. Where a conviction sheet by a Presidency Magistrate does not contain any record of the examination of the accused under s. 342 Cr. Pro. Code, and no statement of the reasons for the conviction is recorded, the conviction should be set aside and retrial ordered. 91 Ind. Cas. 542=27 Cr. L. J. 110=A. I. R. 1926 Cal. 692. Where a substantive sentence of imprisonment is passed, the Honorary Presidency Magistrate must record the reasons for the conviction. 44 M. L. J. 84=71 Ind. Cas. 212=24 Cr. L. J. 84. Under subsection (i), a Presidency Magistrate who tries and convicts an accused in a summary trial, is bound to give reasons for the conviction. 1923 Mad. 144.

371. (1) On the application of the accused a copy of the judgment, or when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

(3) When the accused is sentenced to death by a Sessions judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Case of person sentenced to death.

372. The original judgment shall, be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court and the accused so requires, a translation there of into the language of the Court shall be added to such record.

Judgment when to be translated.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

Court of Session to send copy of finding and sentence to District Magistrate.

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. When the Court of Session passes sentence of death the proceedings shall be submitted to the High Court * and the sentence shall not be executed unless it is confirmed by the High Court.

Sentence of death to be submitted by Court of Session.

Notes—In cases sent up to the High Court for confirmation of sentence of death under this section, it is the practice of that court to be satisfied on the facts as well as the law of the case. Rat. Un. Cr. S. 710; see also 2 C. W. N. 49. In a reference under this section, the entire case is open before the High Court. 31 C. W. N. 221=46, C. L. J. 31=103 Ind. Cas. 790=28 Cr. L. J. 742=A. I. R. 1917 Cal. 621.

375. (1) If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may direct an inquiry or take such evidence itself, or

Power to direct further inquiry to be made or additional evidence to be taken.

it to be made or taken by the Court of Session.

(2) Such inquiry shall not be made nor shall evidence be taken in the presence of jurors or assessors, and, if the Court otherwise directs the presence of the convicted person shall be dispensed with when the same is made or taken.

(3) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court,

Notes.—Vide 12 Cr. L. J. 412=11 Ind. Cas. 596=16 P. W. R. 1911.

376. In any case submitted under section, 374, whether tried, with the aid of assessors, or by jury, the High Court—

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Notes.—Vide 23 Cr. L. J. 33; 5 C. W. N. 921; 19 C. W. N. 536.

377. In every case so submitted the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Notes.—The third judge should act on his own opinion. 1887 A. W. N. 125.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal

of the High Court and attested with his official signature, to the Court of Session.

380. Where proceedings are submitted to a Magistrate of the first class or a Sub-divisional Magistrate as provided by section 562, such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

Notes.—A second class Magistrate found the accused guilty of an offence under s. 322 of the Penal Code and he sent the record and the accused to the District Magistrate under s. 562. The District Magistrate sent the case back to the second class Magistrate pointing out that section 562 was inapplicable, *Held* that the District Magistrate's order was illegal. 4 L. B. R. 150=7 Cr. L. J. 449.

CHAPTER XXVIII.

OF EXECUTION.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant * or taking such other steps as may be necessary.

382. If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute † the sentence to transportation for life.

* See Sch. V, Form XXXV and XXXVI, *infra*.

† See Sch. V, Form XXXVI, *infra*.

Notes.—The High Court is the only Court in which the law has vested the power of postponing the execution of a sentence of death passed and confirmed on a woman found to be pregnant. 2 Weir. 441, see also 34 P. R. 1878 Cr.

383. Where the accused is sentenced to transportation or imprisonment in cases, other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, or is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Notes.—A Magistrate has no power to sentence an accused to suffer imprisonment in a police lock up. The terms "prison" and "jail" do not include any place for the confinement of prisoners who are exclusively in the custody of the police. 7 L. B. R. 62=22 Ind. Cas. 154=15 Cr. L. J. 10.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail, or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged. 385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

*[386. (1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant † for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter;

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender

* Section 386 was substituted by s. 102 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† See Sec. V, Form XXXVII, *infra*.

has undergone the whole of such imprisonment in default, no Court shall issue such warrants unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) The local Government may make rules regulating the manner in which warrants under sub section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly.

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.]

Notes.—The immoveable property of an agriculturist can be attached and sold in execution of an order passed under s. 386, and the mere fact that the warrant is executable as if it were a decree does not make the provisions of s. 22 of the Dekkan Agriculturists Relief Act applicable to such warrant. 28 Bom. L. R. 1231=A. L. R. 1926 Bom. 582. The words "belonging to" include the share of the offender in a Hindu joint family estate. 49 B. 906=27 Bom. L. R. 1363.

* 387. † [A warrant issued under section 386, sub-section (1), clause (a), by any Court] may be executed within the local limits of the jurisdiction of such Court, and, it, shall authorize the ‡ [attachment] and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

* The provisions of ss. 387 and 389 have been declared to apply to fines imposed (1) under the Andaman and Nicobar Islands Regulation, 1876 (III of 1876)—see as recommended by the Andaman and Nicobar Police Act, 1923 (XVIII of 1923).
 † The word "belonging to" is substituted for the word "distress" by *ibid.*

‡ The word "belonging to" is substituted for the word "distress" by *ibid.*

Suspension of execution of sentence of imprisonment.

*(388.) (1) When an offender has been sentenced in fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may—

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case be, of not more than thirty days, and

(b) suspend the execution and release the offender of a bond,† with or without, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and, if the amount of the fine or of any instalment as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once;

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded, and the Court may, at any time after the making of such order, direct that the sentence of imprisonment shall be carried into execution at once.

Notes—Vide s. Weir 445.

1389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

* Section 388 was substituted by s. 3 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923).

† For form see Sch. V. Form XXXVIIA, *infra*.

‡ See foot-note * on p. 227, *supra*.

390. When the accused is sentenced to whipping only, the sentence shall * [subject to the provisions of section 391] be executed at such place and time as the Court may direct.

Execution of sentence of whipping, only.

Notes.—Vide 1 L. B. R. 53.

Execution of sentence of whipping, in addition to imprisonment.

391. (1) When the accused—

+ [(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or

(b) is sentenced to whipping in addition to imprisonment,]

the whipping shall not be inflicted until fifteen days from the date of the sentence, or if an appeal is made within that time, until the sentence is confirmed by the Appellate Court, but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) No accused person shall be sentenced to whipping in addition to imprisonment, when the term of imprisonment to which he is sentenced is less than three months.

Notes.—Where the punishment of whipping is not awarded in

months. 2 Bom. L. R. 54. When an accused is convicted of two offences, for one of which he is sentenced to imprisonment and for the other to whipping, it is not permissible to postpone the whipping merely because the accused appeals against his conviction for the latter offence.

* These words and figures were inserted by s. 21 of the Criminal

for the words "is
in a case which is

4 Bom. L. R. 436. The sentence of whipping in addition to imprisonment, the term of which is less than three months is illegal under s. 391 (3)—2 Weir. 447.

392. (1) In the case of a person of or over sixteen years of age whipping shall be inflicted with a light rattan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in such mode, and on such part of the person, and with such instruments, as the Local Government directs.

Limit of number of stripes. (2) In no case shall such punishment exceed thirty stripes * [and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes.]

Notes.—Under the provisions of ss. 392 and 393, not more than one sentence of whipping and that not exceeding 30 stripes, should be awarded at one time; U. B. R. 1906. Cr. Pro. Code 47=4 Cr. L. J. 281.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping, namely:—

(a) females;

(b) males sentenced to death or to transportation or to penal servitude or to imprisonment for more than five years;

(c) males whom the Court considers to be more than forty-five years of age.

394. (1) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

* These words were added by s. 7 of the Whipping Act, 1909 (IV of 1909)

(2) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

395. (1) In any case in which, under section 394, a sentence of whipping is wholly or partially prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months* [or to a fine not exceeding five hundred rupees which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(2) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term † [or a fine of an amount] exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Noting in the absence of the Magistrate who passed the original Court which passed the on. 20 P. L. R. 1904=33 only to remit altogether a sentence of whipping, or so much of it as has not been executed, or to for a term not exceeding 12 months Vol I, 45. The word "imprisonment" ve sentence of imprisonment and not of fine. Where a sentence of whipping only course open to the Court is to to order imprisonment in lieu of it.

396. (1) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, penal servitude or transportation shall take effect according to the following rules, that is to say—

* These words were inserted by s. 105 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(2) If the new sentence is severer in its kind than the sentence he escaped, the new

(3) When the new sentence is not severer in its kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Notes.—When an accused was released by mistake and the mistake was discovered, five days after the release, the Magistrate directed the sentence to begin on the day on which he was re-arrested. U. B. R. (1897—1901) Vol I, 89.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation, is sentenced to imprisonment, penal servitude or transportation, such sentence shall commence at the same time as the sentence of imprisonment, penal servitude or transportation, if such previous sentence;† [unless the Court orders otherwise.]

* In the case of a youthful offender, however, such sentences run concurrently—see s. 31 of the Reformatory Schools Act, 1897 (VIII of 1897).

† These words were inserted by s. 106 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced :

*[Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.]

Notes.—The passing of concurrent sentences is opposed to the provisions of this section. 2 Bnm. L. R. 111. A Magistrate of the First Class sentenced the accused to two years' rigorous imprisonment on the 6th February on conviction for theft. The Sessions Judge, a month afterwards, sentenced him in another case to three years' rigorous imprisonment, which, he under s. 317, Criminal Procedure Code, directed, should begin to take effect on the expiration of the sentence passed by the Magistrate. On appeal, the conviction and sentence passed by the Magistrate were reversed. *Held*, that the sentence passed by the Sessions Judge must be deemed to have commenced from the time it was ordered to commence, viz, from the expiration of the sentence passed by the Magistrate whether by reversal or by completion of the

imprisonment is sentenced to imprisonment, etc., such imprisonment, etc., shall commence at the expiration of the imprisonment, etc., to which he has been previously sentenced. U. B. R. (1892—1896) Vol. I, 40. A person sentenced to imprisonment is "undergoing" that imprisonment with the meaning of section 397 of the Code from the moment the sentence is passed. 2 Welr. 451. Where a person, who was ordered to be in imprisonment on failure to furnish security for good behaviour escaped from the custody of the Police officer, when he was being taken to jail, and was convicted and sentenced to a term of imprisonment, *held*, that the latter sentence should not be postponed to the expiry of the period of imprisonment for failure to give security 2 Welr. 452.

Saving as to sections 398. (1) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

* This proviso was added by *ibid.*

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Notes—Section 398 provides that nothing in section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction. 2 Weir. 453.

399. (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897* is for the time being in force.

Notes—A Judge or Magistrate is not at liberty in estimating the proper sentence to be passed on juvenile offenders to consider the fact that there is no Reformatory. He is bound to pass a sentence of punishment adequate to the offence. 2 Weir. 453.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Notes—Where in respect of the offence under s. 411 an accused is convicted by the Courts of a Native State, he cannot again be convicted on the same facts in British India. 73 Ind. Cas. 939—24 Cr. L. J. 715.

CHAPTER XXXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

401. (1) When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor-General in Council or the Local Government of a sentence, the Governor-General, as the case may be, may Court before or by which the conviction was had or confirmed to of the trial or of such record thereof as exists.]

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

†[(4A) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.]

* These words were added by s. 107 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was inserted by *ibid.*

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Notes—Section 398 provides that nothing in section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction. 2 Weir. 453.

399. (1) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct such person, instead of being imprisoned in a criminal jail, shall be confined in a reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) This section shall not apply to any place in which the Reformatory Schools Act, 1897* is for the time being in force.

Notes—A Judge or Magistrate is not at liberty in estimating the proper sentence to be passed on juvenile offenders to consider the fact that there is no Reformatory. He is bound to pass a sentence of punishment adequate to the offence. 2 Weir. 453.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Notes—Where in respect of the offence under s. 411 an accused is convicted by the Courts of a Native State, he cannot again be convicted on the same facts in British India. 73 Ind. Cas. 939—24 Cr. L. J. 715.

CHAPTER XXXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

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(2) Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to

(3) If any condition on which a sentence has been suspended or

(4) The condition on which a sentence is suspended or remitted under this section, may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

†[(4A) The provisions of the above sub-sections shall apply to any order passed by a Criminal Court under any section of the Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.]

* These words were added by s. 107 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was inserted by *ibid.*

(5) Nothing herein contained shall be deemed to interfere with the right of * [His Majesty, or of the Governor-General when such right is delegated to him] to grant pardons, reprieves, respites or remissions of punishment.

by His Majesty, Governor-General, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.]

(6) The Governor-General in Council and the Local Government

Notes—In a case, where it was held that the accused committed murder without any apparent sane motive and that the accused was at the time suffering from mental derangement of some sort, the High Court holding that the accused was not entitled to be acquitted under s. 84, Penal Code, recommended the case to the Local Government, under this section, to be dealt with in such manner as it thought fit. 23 C. 604. This section has application only to persons punished with imprisonment. 11 A. 79

[402. (1)] The Governor-General in Council or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

[(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Indian Penal Code].

Notes—"Doubts have been expressed as to the consistency of section 402 with section 54 or 55 of the Indian Penal Code and these have now been resolved."—*Statement of Objects and Reasons.*

* These words were substituted for the words "Her Majesty" by *ibid.*

† This sub-section was inserted by *ibid.*

‡ This section was re-numbered by s. 108 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVI) of 1923).

§ Sub-section (2) was added by *ibid.*

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CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. (1) A person who has once been tried by a Court of

Person once convicted
or acquitted not to be
tried for same offence.

competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same

offence, nor on the same facts for any other offence which a different charge from the one made against him might be made under section 236, or for which he might have been tried under section 237.

(2) A person acquitted or convicted of any offence may afterwards be tried for any distinct offence for which a separate charge has been made against him on the former trial under section 237.

(3) A person convicted of any offence constituted by an act causing consequences which, together with such act, constitute a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences did not happen, or were not known to the Court to have happened at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by an act causing consequences which, together with such act, constitute a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences did not happen, or were not known to the Court to have happened at the time when he was convicted.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897,* or section 188 of this Code.

Explanation—A person who has been tried for an offence and acquitted or convicted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence which a different charge from the one made against him might be made under section 236, or for which he might have been tried under section 237.

Illustrations.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with

(5) Nothing herein contained shall be deemed to interfere with the right of * [His Majesty, or of the Governor-General when such right is delegated to him] to grant pardons, reprieves, respites or remissions of punishment.

†[(5A) Where a conditional pardon is granted by His Majesty, or, in virtue of any powers delegated to him, by the Governor-General, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.]

‡(6) The Governor-General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

Notes—In a case, where it was held that the accused committed murder without any apparent sane motive and that the accused was at the time suffering from mental derangement, the Court

11 A. 79

‡[402. (1)] The Governor-General in Council or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other, mentioned after it—
 (a) death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced simple imprisonment for a like term, fine.

§[(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Indian Penal Code].

Notes—"Doubts have been expressed as to the consistency of section 402 with section 54 or 55 of the Indian Penal Code and these have now been resolved."—*Statement of Objects and Reasons.*

* These words were substituted for the words "Her Majesty" by *ibid.*

† This sub-section was inserted by *ibid.*

‡ This section was re-numbered by s. 108 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVI of 1923).

§ Sub-section (2) was added by *ibid.*

|| XLV of 1860.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897,* or section 188 of this Code.

Explanation—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with

(5) Nothing herein contained shall be deemed to interfere with the right of [His Majesty, or of the Governor-General when such right is delegated to him] to grant pardons, reprieves, respites or remissions of punishment.

† [(5A) Where a conditional pardon is granted by His Majesty, or, in virtue of any powers delegated to him, by the Governor-General, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.]

§ [(6) The Governor-General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.]

Notes—In a case, where it was held that the accused committed

II A. 79.

† [402. (1)] The Governor-General in Council or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other, mentioned after it—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that in which he might have been sentenced to simple imprisonment for a like term, fine.

§ [(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Indian Penal Code].

Notes—"Doubts have been expressed as to the consistency of section 402 with section 54 or 55 of the Indian Penal Code and these have now been resolved."—*Statement of Objects and Reasons.*

* These words were substituted for the words "Her Majesty" by *ibid.*

† This sub-section was inserted by *ibid.*

‡ This section was re-numbered by s. 108 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVI of 1923).

§ Sub-section (2) was added by *ibid.*

|| XLV of 1860.

theft as a servant, or upon the same facts with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C, may afterwards be charged with, and tried for, dacoity on the same facts.

Notes.—This section amplifies the well known maxim *Nemo debet in vitari*. This section embodies the well established rule of common

law, that a person cannot be tried for a crime on the grounds

trations (f) and (g). 24 M. L. J. 463=19 Ind. Cas. 340=36 M. 308. An
the
no
26 ;
A. L. J. 673.

PART VII.

Of Appeal, Reference and Revision.

CHAPTER XXXI.

OF APPEALS. *

Unless otherwise provided, no appeal to lie. 404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Notes—The words "except as provided for by this Code" must include cases in which a Magistrate's acquittal can be set aside by the Government, as regards to the Government's appeal.

24 M. L. J. 673—2 C. W. N. 225.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application for restoration of attached property.

Notes—Vide 11 B. 438 ; 21 Cr. L. J. 210=54 Ind. Cas. 954.

* For periods of limitation, see the Indian Limitation Act, 1908 (of 1908), Sch. I, second division.

406. Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

(a) if made by a Presidency Magistrate, to the High Court ;

(b) if made by any other Magistrate, to the Court of Session ;

Provided that the Local Government may, by notification in the local official Gazette, direct that in any district specified in the notification, appeals from such orders made by a Magistrate other than the District Magistrate or a Presidency Magistrate shall lie to the District Magistrate and not to the Court of Session :

Provided, further, that nothing in this section shall apply to persons the proceedings against whom are laid before a Sessions Judge in accordance with the provisions of sub-section (2) or sub-section (3A) of section 123].

Notes.—In an appeal from an order under s. 107, the appellate court has got power to order a retrial. 48 A. 501 = 27 Cr. L. J. 945.

406A. Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

(a) if made by a Presidency Magistrate, to the High Court ;

(b) if made by the District Magistrate to the Court of Session ; or

(c) if made by a Magistrate other than the District Magistrate, to the District Magistrate].

407. (1) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 (or in respect of whom an order has been made or a sentence has been passed under section 380) by a Sub-Divisional Magistrate of the second class, may appeal to the District Magistrate.

* Section 406 was substituted by s. 109 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Section 406A was inserted by s. 110, *ibid.*

‡ These words and figures were inserted by s. 111, *ibid.*

(2) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals may be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, may be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Notes.—This section does not entitle a District Magistrate to send appeals under s. 195 to a Magistrate of the first class subordinate to him. That section deals with appeals from convictions. 34 A. 244=14 Ind. Cas. 657=13 Cr. L. J. 273 ; 30 C. 394. A District Magistrate cannot delegate revisional work. 2 Bom. L. R. 536. A District Magistrate has jurisdiction to withdraw a postponed appeal to his own file from the file of a Sub-divisional Magistrate, by whom it has been heard in part. 31 M. 277=18 M. L. J. 89. When a second class Magistrate is gazetted to be a first class Magistrate during the pending of a trial of a criminal case, an appeal from the decision in that case by that Magistrate lies to the Sessions Judge as one from the decision of a first class Magistrate. 99 Ind. Cas. 82=28 Cr. L. J. 50=A. I. R. 1927, Lah. 138.

*408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 † [or in respect of whom an order has been made or a sentence has been passed under section 380] by a Magistrate of the first class, may appeal to the Court of Session :

Provided as follows :—

† (b) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding

* As to appeals from decisions under the Frontier Crimes Regulation, 1901 (III of 1901), see Ch. III of that Regulation.

† These words and figures were inserted by s. 112 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Clause (a) of the provision to s. 408 was omitted by s. 23 of the Criminal Law (Amendment) Act, 1923, (XII of 1923).

four years, or any sentence of transportation, the appeal of all or any of the accused convicted at such trial shall lie to the High Court;—

(c) When any person is convicted by a Magistrate of an offence under section 524A of the Indian Penal Code; the appeal shall lie to the High Court.

Notes.—Where at a trial some persons were convicted by an Assistant Sessions Judge and sentenced to over 4 years, imprisonment and others sentenced to less than 4 years, imprisonment, the appeal of the latter also lay to the High Court. 13 A. L. J. 272=16 Cr. L. J. 33=28 Ind. Cas. 737. When a Sessions Judge has confirmed the sentences passed by an Assistant Sessions Judge on some of the accused persons, he has no jurisdiction to hear the appeals preferred by any of the prisoners in the same case, as such appeals lie to the High Court under proviso (a). Rat. Un. Cr. C. 655. The object of a sentence of transportation or years is passed, any appeal of the Court. U. B. R. (1897-1901) if imprisonment exceeding four months or sentence of imprisonment,

and in fact the whole of cl. here, therefore, two sentences in aggregation of sentences within the 111=14 Cr. L. J. 119=18 Ind.

8: 23 Cr. L. J. 595; 11 Bom. L. R. 544, 23 L. R. 1901. Appeal lies against an order under s. 56s, clause (1). 28 Bom. L. R. 671=96 Ind. Cas. 521. When a first class Magistrate passes two sentences of fine amounting in the aggregate to over Rupees 50 an appeal lies under s. 56. 28 Bom. L. R. 668=27 Cr. L. J. 956. Where the total term of imprisonment to which the accused has been sentenced either by an Assistant Sessions Judge or by a Magistrate under s. 30, does not exceed 4 years in the aggregate, the appeal undoubtedly lies to the Court of the Sessions Judge. 103 Ind. Cas. 208=28 Cr. L.

67

appeal to Court of Session how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the sessions Judge or by an Additional Sessions Judge.

* These words were inserted by s. 512 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

* [Provided that an Additional Sessions Judge shall hear only such appeals as the Local Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him].

Notes.—This section distinctly lays down that any person convicted on a trial held by a Magistrate of the first class may appeal to a Court of Session. 33 A. 510=8 A. L. J. 524. An appeal can be transferred to the Additional Sessions Judge by the Sessions Judge. 37 A. 286.

Appeal from sentence of Court of Sessions.

410. Any person convicted on a trial held by a Sessions Judge, or an additional Sessions Judge, may appeal to the High Court.

Notes.—*Vide* 4 M. H. C. 146.

Appeal from sentence of Presidency Magistrate.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Notes.—*Vide* 16 C. 799 ; 30 B. 145 ; 2 M. 30 ; 3 Ind. Cas. 285 ; 17 C. L. J. 319.

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or any Presidency Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

Notes.—*Vide* 31 C. L. J. 132 ; Col. Dig. Cr. 31 of 1876 ; 4 N. R. 163.

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session † passes a sentence of imprisonment not exceeding one month only or ‡ in which a Court of Session or District Magis

* This proviso was added by s. 113 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The words "or the District Magistrate or other Magistrate of the first class" were omitted by s. 24 of the Criminal Law Amendment Act, 1923 (XII of 1923).

‡ These words were inserted by *ibid.*

[Other Magistrate of the first class passes a sentence] of fine not exceeding fifty rupees only.*

Explanation—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

at the original sentence passed was not open to appeal. *Held* (i) that, when a Magistrate once passed a sentence exceeding one month, an appeal to the Criminal Court was not barred. *Pro. Code* and legally he appeal therefore, to the Criminal Court.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred rupees only.†

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which could not otherwise be liable in appeal shall be appealable merely

* The words "or of whipping only" were omitted by *ibid.*

† The words "of imprisonment not exceeding three months only, or" were omitted by s. 25, *ibid.*

‡ The words "or of whipping only" were omitted by *ibid.*

on the ground that the person convicted is ordered to find security to keep the peace.

Explanation—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

*[415A. Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.]

Notes—Where several accused are tried in one trial, though the sentence on one accused may not be appealable, still if the sentence on the others are appealable, all the accused persons have a right of appeal. 28 Bom. L. R. 671.

416. [Saving of sentences - on European British subjects.]
Omitted by s. 26 of Act XII of 1923.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Notes—Under the Criminal Procedure Code the Local Government has the same right of appeal against an acquittal, as a person convicted has of appealing against his conviction and sentence, and there is no

* Section 415A was inserted by s. 114 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

457=1915 M. W. N. 411. The High Court must be satisfied that the case is conclusively proved in the sense in which this has to be done before an appeal from an acquittal can be accepted. 27 P. L. R. 197.

Appeal on what matters admissible. [418. (1)] An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

[418. (2)] Notwithstanding anything contained in sub-section (1) or in section 423, sub-section (2), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.]

Explanation.—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

Notes.—The provisions of this section apply equally to all criminal appeals, whether made by the Government or by accused persons. 17 C. P. L. R. 75. The words "where the trial by a jury" mean "where the trial in fact was by a jury."—25 B. 680=3 Bom. L. R. 278 (F. B); see also 2 C. W. N. 49.

419. Every appeal shall be made in the form of a petition of appeal.

The petition shall (unless the court otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Notes.—This section applies as much to a person in jail as to any other appellant, and requires that the petition shall be prepared in a certain form. 13 A. 171.

420. If the appellant is in jail, he may present his petition of appeal in the same manner as if he were not in jail, and copies of the petition shall be sent to the proper Appellate Court.

Notes.—This section is not derogatory to the rules laid down in s. 419. 13 A. 171. Under the provisions of this section presentation of

* Section 418 was re-numbered by s. 115 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Sub-section (2) was added by *ibid.*

the petition of appeal by an appellant in jail, to the officer in charge the jail is equivalent to presentation in Court. 9 M. 258.

421. (1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily :

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notes.—Although a Judge would be acting within his powers under s. 421, in rejecting an appeal without sending for the record, such a course is ordinarily very inconvenient and should not be adopted. A. W. N. 1883, 145. This section lays down that the appellant in a criminal appeal or his pleader should have a reasonable opportunity of being heard in support of the appeal. 9 Ind. Cas. 65=12 Cr. L. J. 9=38 C. 307; see also 29 M. 236=4 Cr. L. J. 57; 42 C. L. J. 551=92 Ind. Cas. 894; 42 C. L. J. 554; 93 Ind. Cas. 76=27 Cr. L. J. 412; 12 C. W. N. 248; 3 A. L. J. 693; 1925 Lah. 355; 2 P. L. T. 10; 36 C. 385.

... which have not been
... 4 Cr. L. J. 373. It is
... criminal appeal on
... He must consider
... 93; see also 32 C.
... 27; 46 M. 382; 24

Cr. L. J. 475; 73 Ind. Cas. 694; 17 A. 241; 19 A. 500 (F.B.); 25 M. 534; 25 Cr. L. J. 1237; 72 Ind. Cas. 893. Where the appellate Court rejects an appeal summarily acting under this section without giving the notices required by s. 422, it is not competent to alter the nature of the sentence. Rat. Un. Cr. C. 384. An order of summary rejection of an appeal under the provisions of this section does not amount to a ... to such an order. 6 C. P. L. R. ... d received the Sessions Judge is ... ellant and ought not to dismiss the ... Im. 42 C. L. J. 551=27 Cr. L. J. 382. It is not an absolute rule that under this section, appellant or his pleader must be heard after the record is sent for. 1st Ind. Cas. 595=29 Bom. L. R. 488.

422. If the Appellate Court does not dismiss the appeal summarily, it shall, cause notice to be given to
- Notice of appeal. : the appellant or his pleader, and to such officer as the Local Government may appoint in : it

behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court

r ss. 422, and 423,
Weir 474.

423. (1) The Appellate Court shall then send for the record of the case, if such record is not already in the Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law.

(b)

(c) in an appeal from any other order, alter or reverse such order;

(d) make any amendment or any consequential or incidental order that may be just or proper.

(2) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Notes.—The section does not authorize an appellate Court to order

power under this section to alter the conviction from one under s. 353, I. P. C. to one under s. 183. 1912 M. W. N. 1110=19 Ind. Cas. 335=14 Cr. L. J. 239 Under this section an appellate Court has power to alter the finding of the lower
66=10 Ind. Cas. 372
the High Court as a

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court :

Judgments of subordinate Appellate Courts.

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Notes.—The appellate Court should decide both on the sufficiency of the prosecution evidence to warrant a conviction, and on its reliability. 2 Weir. 536. An appellate Court cannot alter a conviction of an abettor to one of abetment. 15 Cr. L. J. 694.

behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

And, in cases of appeals under section 417, the Appellate Court

ss. 422, and 423,
Velr 474.

423. (1) The Appellate Court shall then send for the record of the case, if such record is not already in the Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) In an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law.

(b) In an appeal from a conviction, (i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried, by a Court of competent jurisdiction

(c) in an appeal from any other order, alter or reverse such order;

(d) make any amendment or any consequential or incidental order that may be just or proper.

the Court to alter the sentence, or to a misunderstanding on the part of the jury of the law as laid down by him.

445. (1) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

446. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Notes.—The only Courts which have power to suspend the execution of a sentence or order, are the Court to which an appeal lies and the High Court. 2 Weir 536. Mere previous respectability of a man is *per se* no sufficient ground for granting bail when he has been convicted of an offence. An order suspending the sentence under section 426 should not be passed unless very special case is shown. 92 Ind. Cas. 703—27 Cr. L. J. 319—A. I. R. 1926 Nag. 279.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

428. (1) In dealing with an appeal under this section

Appellate Court may
take further evidence or
direct it to be taken.

to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall be subjected to the provisions of Chapter XXV, as if it were an inquiry.

Notes.—A Court of criminal appeal can take additional evidence

Ind. Cas. 943. This section does not empower an appellate Magistrate
self record such
Cr. L. J. 734=8

been originally started by a complaint in Court. A. W. N. 1900, 130. This section gives an appellate Court wide discretion. The

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with opinions thereon, shall be laid before Judge of the same Court, and after such hearing (if any) as he thinks fit.

Procedure where Judges of Court of Appeal are equally divided.

deliver his opinion, and the Judgment or order shall follow such opinion.

Finality of orders on appeal. 430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference, and pending such decision, may either commit the accused to jail or release him on bail to appear for judgment when called upon.

Notes—A reference is to be made to a Division Bench. Bom. L. R. 52. Rat. Un. Cr. C. nlon except on re-
rence the sentence can be enhanced. 93 Ind. Cas. 1053; 27 Cr. L. J. 537.
Orders passed on reference are conclusive. 1890 A. W. N. 225.

433. (1) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs. (2) The High Court may direct by whom the costs of such reference shall be paid.

Notes—The High Court can not review its own order. Rat. Un. C. 638.

*[*Explanation*—All Magistrates whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions.]

record, with such remarks thereon as he thinks fit, to the District Magistrate.†

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.

sions Judge, 1 L. B. R. 119. The High Court can interfere even in pending proceedings. 39 C. L. J. 236=25 Cr. L. J. 1258 (F. B.) 40 C. L. J. 1258=26 Cr. L. J. 1258.

proceeding. 25 Cr.
8; 29 Ind. Cas.
N. 365. But the
appeal 1927 M.
the order of a
W. N. 78; 31 A.

* This Explanation was added by Act XVIII of 1923.

† Sub-section (3) was omitted by *ibid.*

38; 26 B. 785; 26 M. 9^e Under s. 110 Cr. Pro. Code. 73 Ind. Cas. 33=24 Cr. L. J. 593.

*[436.] On examining any record under section 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make or direct any Subordinate Magistrate to make further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any [person accused of an offence] who has been discharged.

†[Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of shewing cause why such direction should not be made.]

Scope—This section contemplates a case, where a superior Court thinks that a further enquiry should be made into any complaint which has been dismissed, or into the case of an accused person who has been discharged. C. W. N. 173=5 Cr. L. J. 16; 8 Bom. L. R. 694; 2 Weir, 244; 2 O. C. 363; 13 C. L. R. Cr. 189; U. B. R. (1897—1901) Vol. 1, 96; 2 Bom. L. R. 586; 10 B. 131; 16 Cr. L. J. 214=4 P. W. R. 1915 Cr.=16 Cr. L. J. 214=27 Ind. Cas. 838=130 P. L. R. 1915; 39 C. 238=14 Ind. Cas. 768=13 Cr. L. J. 304. The term 'accused person' in this section includes persons against whom proceedings under s. 110 have been taken. Where the Magistrate of

* This section which was originally numbered 437 was re-numbered 436 by s. 117 of the Code of Criminal Procedure (Amendment) 1923 (XVIII of 1923).

† Substituted by *ibid.*

‡ Added by *ibid.*

the District dismissed a complaint under s. 203, an application for

also 9 A. L. J. 310=13 Cr. L. J. 255=14 Ind. Cas. 607; 10 C. 207. Where the nature of the case is such that Courts are liable to take different

Magistrate has improperly discharged an accused under section 253. Rat. Un. Cr. C. 218; 3 L. B. R. 97 (F. B.)=4 Cr. L. J. 490; see 394 P. L. R. 1902; 3 Lah. L. J. 97; 20 P. W. R. 1916; 26 Cr. L. J. 1357; 21 Cr. L. J. 571; 12 Cr. L. J. 364; 26 Cr. L. J. 1393; 27 Cr. L. J. 567. In such a case no reference to the High Court is necessary. Rat. Un. Cr. C. 213; 988. This section applies where an accused is discharged under section 203, 253 or 259. 33 M. 85. In case of acquittal no order for further inquiry can be made. 20 C. 633; 4 C. W. N. 346; 5 C. W. N. 72; 7 C. W. N. 493; 1 A. L. J. 415; 17 Cr. L. J. 95; 88 Ind. Cas. 995; 25 Cr. L. J. 359; 38 M. 585; 4 Lab. L. J. 331. Where on the evidence a revising authority comes to a different conclusion from that of the Court a further enquiry should not be ordered. 26 Cr. L. J. 382=85 Ind. Cas. 726. Where a complaint has been summarily dismissed without notice to the party complained against there is no discharge under the operation of this section and a further inquiry can be ordered. The present section contains instead of "any accused" "the accused" and "against whom proceedings" "against the accused".

[437.] When, on examining the record of any case under section 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session, and the accused has been improperly discharged or District Magistrate has committed for trial upon the order of the Sessions Judge or District Magistrate, improperly discharged:

* This section which was originally numbered 236 was renumbered 47 by s. 117 of the Code of Criminal Procedure (Amendment) Act, 1923 (VIII of 1923).

Provided as follows:—

- (a) that the accused has had an opportunity of showing cause to such Judge or Magistrate why the commitment should not be made;
- (b) that, if such Judge or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Judge or Magistrate may direct the inferior Court to inquire into such offence.

Notes—This section gives the fullest discretion to a District Magistrate or a Sessions Judge to order a commitment where he considers that an accused person has been improperly discharged. 26A. 564=A. W. N. 1904, 125=1 A.L.J. 292=1 Cr. L. J. 510. Both the Sessions Judge and the District Magistrate can order commitment under this section. 28 not come within the purview of the District Magistrate ed could not be adequately 89=8 Cr. L. J. 47. It is

The High Court can revise an order of commitment on points of fact as well as on questions of law. 81 Ind. Cas. 913=25 Cr. L. J. 1089. The High Court has to weigh both the opinions and consider the entire evidence on the record just as it would consider in any criminal matter coming before it for decision. 25 Cr. L. J. 785=1924 Oudh. 314. The High Court can interfere in revision with wrong inference, even of fact, from proved facts. 25 Cr. L. J. 1073=81 Ind. Cas. 897=1925 Nag. 123. Under this section the Sessions Judge has jurisdiction to commit an accused for trial in the Sessions Court if he is of opinion that the case against the accused is triable exclusively by the Court of Session, or it is intimately connected with a charge exclusively triable by the Sessions Court and forms part of the same transaction. 53 C. 645=97 Ind. Cas. 659=27 Cr. L. J. 1139. An order of the Sessions Judge in the exercise of his revisional jurisdiction under this section cannot form the subject-matter of a reference to the High Court at the instance of the Magistrate whose order has been interfered with. 49 A. 443=25 A.L.J. 191=28 Cr. L. J. 281.

438. (1) The Sessions Judge or District Magistrate may, if Report to High Court. thinks fit on examining under section 43 otherwise the record of any proceeding, for the orders of the High Court the result of such examination

when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him * [by or under any general or special order of the Sessions Judge].

Notes.—This section enables a District Magistrate to report to the High Court for orders the proceedings of any inferior Criminal Court whose records he has examined under s. 435; but the law gives him no power to criticise or refer the proceedings of a Court superior to his own, e.g., the Sessions Court: 2 Weir. 565; 2 Weir. 500; Rat. Ho. Cr. C. 312; 2 A. L. J. 589=28 A. 91=A. W. N. 1905, 198=2 Cr. L. J. 515; 12 A. L. J. 519=36 A. 378; 12 A. L. J. 255; 6 Bom. L. R. 1099=1 Cr. L. J. 115; 9 A. 362=A. W. N. 1887, 64. Where the object of the reference under this section by a District Magistrate, is to induce the High Court to set aside an order of acquittal by an inferior Court, the reference will not be entertained by the High Court. If the Local Government desires to appeal from the acquittal s. 417 is open to it. 25 A. 128=A. W. N. 1902, 111. A District Magistrate has no jurisdiction to revise his order if the order passed by him is illegal, he should refer it to the Sessions Judge under this section. 2 L. B. R. 43. Where the order passed by the Sessions Judge is illegal, the Public Prosecutor to bring it before the High Court. 12 M. L. T. 170=1912 M. W. N. 812=16 Ind. Cas. 522=13 Cr. L. J. 714=23 M. L. J. 732. A District Magistrate is not competent to refer to a High Court, under s. 438, a point of law actually arising in a case pending before him. 15 Cr. L. J. 472=24 Ind. Cas. 352. Where no appeal has been preferred by the Government, it is very rarely correct to interfere, on revision with an acquittal. 13 P. W. R. 1907 Cr.=72 P. L. R. 1908=5 Cr. L. J. 438. A District Magistrate is competent to make a reference under this section recommending that a sentence passed by a Sessions Judge should be enhanced. 5 Lah. 21=25 Cr. L. J. 928=81 Ind. Cas. 544=1924 Lah. 451. A District Magistrate may refer to the High Court a case for the purpose of revision to the High Court of Session. Code of Criminal Procedure made by the Government should be grounds for revision. 658=28 Cr.

* Substituted by Act XVIII of 1923.

439. (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

† (6) Notwithstanding anything contained in this section, any

conviction,]

Optional with Court
to hear parties

44n. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision :

* These words were substituted for the words "by the Sessions Judge" by s. 118 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVII of 1923).

† The figures "195" were omitted by s. 119, *ibid.*

‡ This sub-section was added by *ibid.*

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, subsection (2).

Notes—No party has any right to be heard. 26 Cr. L. J. 527; 10 C. L. J. 80; 85 I. C. 367; 23 M. L. J. 371. Calcutta and Allahabad High Courts hear counsel generally. 19 C. 380; 11 C. W. N. 316; 25 A. L. J. 1010. But the Madras High Court does not. 14 M. 363.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision to be considered by the High Court, and the facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

Notes—Vide 12 B. 337; 5 M. L. T. 79, 46 M. 253.

442. When a case is revised under this Chapter by the High Court, it shall, in manner hereinbefore provided by section 425, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

Application of the section—Vide. 4 P. R. 1909.

Notes—Although the High Court has power to interfere in revision, with an original or appellate judgment of acquittal, it will not ordinarily do so. 27 A. 359=A. W. N. 1904, 278; 15 B. 349. The power under this section ought to be exercised with great care, and with regard to pending trials, only in most exceptional cases. 2 A. L. J. 673=A. W. N. 1905, 238=2 Cr. L. J. 720. Under this section, the High Court is not incompetent to interfere in revision as well as to interfere on appeal. 2 Weir. 573. The High Court, in revision, has power of ordering a re-trial, though it may not convert a finding of acquittal into one of conviction. L. B. R. (1893-1900), 41. Although the High Court does not ordinarily interfere with orders of acquittal to would hesitate to do so, where "clation of doubtful evidence. on the face of the judgment. this section the High Court

is empowered to exercise any of the powers given to a Court of appeal under section 423 (c), 2 Weir 575 (F.B.)=2 Weir 634.

Under this section, although it is not usual for the High Court to interfere with the decision of the lower Court, when the decision is based upon a consideration of the evidence, yet, if the lower Court has not valued the testimony of accomplices as it ought to be, and has admitted, improperly hearsay evidence on important points, the High Court is justified in going into the facts of the case in exercise of its revisional powers. 2 C. W. N. 672. The High Court has no power under this section to interfere with an order made by a Civil Court under s. 476 Cr. Procedure Code. 17 M. L. T. 268=16 Cr. L. J. 212=27 Ind. Cas. 904; 14 Cr. L. J. 466=20 Ind. Cas. 752=7 L. B. R. 76; 26 M. 98; 31 A. 38; 9 Cr. L. J. 24; 40 C. 477; 16 Cr. L. J. 232; *con tra* 27 Cr. L. J. 1221; 92 Ind. Cas. 454; 14 Cr. L. J. 496; 5 P. R. 1908; 23 A. 249; 20 Ind. Cas. 752.

On hearing a revision the High Court could hear a private complaint in the case of an offence under Ss. 500 and 50, I. P. Code. 50 C. 159=71 Ind. Cas. 670. The High Court's power of interference in revision with findings of fact is one that should be sparingly used. 1933 Oudh. 8. Ordinarily the High Court would not in revision, go behind the concurrent findings of the Courts below on a question of fact. 73 Ind. Cas 892.

This section does not authorise the High Court to direct a subordinate Court to refrain from trying an accused against whom process has been issued by such Court. 2 Pat. 257=74 Ind. Cas. 713=24 Cr. L. J. 809.

The High Court has power under this section to interfere with an order of acquittal, but in practice it is largely restricted to cases which have not been tried out ordinarily. It can interfere only in cases where it

PART VIII.

Special Proceedings.

[CHAPTER XXXIII.]

SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN
AND INDIAN BRITISH SUBJECTS ARE CONCERNED.

443. (1) Where, in the course of the trial outside a presidency-town of any offence punishable with imprisonment, the accused person, at any time before he is committed for trial under section 213 or is asked to show cause under section 242 or enters on his defence under section 256, as the case may be, claims that the case ought to be tried under the provisions of this Chapter, the Magistrate inquiring into or trying the case after and after allowing the to adduce evidence

(a) that the complainant and the accused persons or any of them are respectively European and Indian British subjects or Indian and European British subjects, or

(b) that, in view of the connection with the case of both an European British subject or an Indian British subject, it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter,

record a finding that the case is a case which ought to be tried under the provisions of this Chapter or, if he is not so satisfied, record a finding that it is not such a case.

(2) Where the Magistrate rejects the claim, the person by whom it was made may appeal to the Sessions Judge, and the decision of the Sessions Judge thereon shall be final and shall not be questioned in any Court in appeal or revision.

* Chapter XXXIII (sections 443 to 449) was substituted for original Chapter XXXIII (sections 443 to 463) by s. 27 of the Criminal Law Amendment Act, 1923 (XII of 1923).

(3) Where the Magistrate rejects the claim, he shall stay the proceedings until the expiration of the period allowed for the presentation of the appeal or, if an appeal is presented, until it has been decided.

Notes.—Where a European employee of a Railway administration launches a complaint against a British Indian subject, the latter can not claim to be tried under Chapter 33 of the Criminal Procedure Code. 3 Bur. L. J. 147—1924 Rang. 373. A claim to be dealt with as an European British subject or an Indian British subject or an European not being a British subject or an Indian British subject which is dealt with in the Criminal Procedure Code, the claimant has to make under section 443 (1) (a), the claimant and the accused persons or any of them are respectively European and Indian British subjects or Indian and European British subjects. 40 C. L. J. 254—1925 Cal. 14.

444 For the purposes of section 443, "complainant" means

any person making a complaint or, in relation to any case of which cognizance is taken under clause (b) of section 190, sub-section (1) any person who has given information relating to the commission of the offence within the meaning of section 154 :

Provided that a Public prosecutor, a public servant, a member, officer or servant of any local authority, a railway servant as defined in section 3 of the Indian Railways Act, 1890, * or an officer or servant of any company, association or other body to which the Local Government may, by general or special order published in the local official Gazette, declare the provisions of this section to apply, shall not, by reason only of the fact that he has made a complaint of, or given information of, an offence in his capacity as such Public Prosecutor, public servant, railway servant, member, officer or servant, be deemed to be a complainant within the meaning of this section nor shall a police-officer be so deemed by reason only of the fact that a report under section 173, relating to a case has been made by or through him.

Notes.—Clause (1) lays down that a complainant is any person making a complaint or, in relation to any case of which cognizance is taken under clause (b) of section 190, sub-section (1) any person who has given information relating to the commission of the offence within the meaning of section 154 :

445. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a summons-case, the Magistrate trying the same, shall direct that the case be referred

case.

(2) Where the Magistrates constituting the Bench by which a case is tried under this section differ in opinion, the case, together with their opinions thereon, shall be laid before the Sessions Judge, who may examine any party or re-call and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall thereafter pass such judgment, sentence or order in the case as he thinks fit and as is according to law.

(3) Any person convicted by a Bench under this section shall have the same right of appeal as if he had been convicted by a Magistrate of the first class, and any person convicted by a Sessions Judge under sub-section (2) shall have the same right of appeal to the High Court as if he had been convicted by the Sessions Judge at a trial held by the Sessions Judge under this Code.

(4) In any case in which it is impracticable to constitute a Bench in accordance with the provisions of sub-section (1) in any district, the District Magistrate shall transfer the case for trial by a like Bench to such other district as the High Court may, by general or special order, direct.

(5) Notwithstanding anything contained in this section, the Local Government may, by notification in the local official Gazette, direct that all summons-cases tried under the provisions of this Chapter in any district specified in the notification shall be tried as if they were warrant cases in accordance with the provisions hereafter in this Chapter laid down for the trial of warrant-cases.

446. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a warrant-case, the Magistrate inquiring into or trying the case shall, if he does not discharge

the accused under section 209 or section 253, as the case may be, commit the case for trial to the Court of Session whether the case is or is not exclusively triable by that Court.

(2) Where an accused is committed in the Court of Session under sub-section (1), the Court shall proceed to try the case as if the accused had required to be tried in accordance with the provisions of section 275, and the provisions of that section and the other provisions of Chapter XXIII, so far as they are applicable, shall apply accordingly :

Provided that where the trial before the Court of Session would in the ordinary course be with the aid of assessors, and the accused, or all of them jointly, require to be tried in accordance with the provisions of section 209, the trial shall be held with the aid of assessors.

447. If at any stage of an inquiry or trial under this Code it

appears to the Magistrate that the case is or might be held to be a case which ought to be tried under the provisions of this Chapter, he shall forthwith inform the accused person of his rights under this Chapter.

References to Sessions Judge to be construed as references to High Court in Rangoon. 448. For the purpose of the trial in Rangoon of any person under the provisions of this Chapter, references to the Sessions Judge shall be construed as references to the High Court of Judicature at Rangoon.

Special provisions relating to appeal.

449. (1) Where—

- (a) a case is tried by jury in a High Court or Court of Session under the provisions of this Chapter, or
- (b) a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, or

(c) a case is tried by jury in the High Court in a presidency town and the High Court grants leave to appeal on the ground that the case would, if it had been tried outside a presidency town, have been triable under the provisions of this Chapter,

then, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the letters patent of any High Court, an appeal may lie to the High Court on a matter of fact as well as on a matter of law.

(2) Notwithstanding anything contained in the letters patent of any High Court, the Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original order of acquittal passed by the High Court in any such trial as is referred to in sub-section (1).

(3) An appeal under sub-section (1) or sub-section (2) shall, where the High Court consists of more than one Judge, be heard by two Judges of the High Court.

Notes.—An appeal from the original Criminal Sessions of the High Court under section 418 is governed by art. 155 of the Limitation Act of 1908. 53 C. 746—27 Cr. L. Cal. 1203. Where a European is tried by a Judge of the High Court

450 463. [Repealed]

CHAPTER XXXIV.

LUNATICS.

464. (1) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person

• See the footnote to Chapter XXXIII, *supra*.

to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

*[(1A) Pending such examination and inquiry, the Magistrate may deal with the accused in accordance with the provisions of section 466].

(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he †[shall record a finding to that effect and] shall postpone further proceedings in the case.

Notes—Where the Magistrate is of opinion that the accused is of unsound mind and therefore incapable of making his defence he cannot

different Judge 3 Pat. L. J. 291.

465. (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, ‡ [and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged].

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Notes—The provisions of this section are mandatory and the fact that the committing Magistrate acted correctly under s. 464 does not absolve the Sessions Judge from following the procedure laid down by this sec-

* This sub-section was inserted by s. 120 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

† These words were inserted by *ibid.*

‡ These words were substituted for the words "and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed" by s. 121, *ibid.*

tion when his mind is not free from doubt as to the accused's mental state. 7 Lah. 375=27 P. L. R. 454=93 Ind. Cas. 1048=27 Cr. L. J. 552=A. I. R. 1926 Lah. 498. The moment the question of insanity of the accused is raised, the Judge must put to the jury as a preliminary issue to be tried by them as to whether or not the jury are satisfied that the accused is a person of unsound mind and can stand his trial and is in a position to understand the proceedings which are going on in Court. 96 Ind. Cas. 160=27 Cr. L. J. 896; 44 C. L. J. 285; A. I. R. 1927 Cal. 289.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, * [whether the case is one in which bail may be taken or not], may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

† [(2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if Custody of lunatic. sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the Local Government :

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912.]†

Notes.—Vide 2 Weir. 381.

467. (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may, at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

* These words were substituted for the words "If the case is one in which bail may be taken" by s. 122, *ibid*.

† This sub-section was substituted by s. 122 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII) of 1923.
: IV of 1912.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Notes—Vide 3 Weir. 582.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

(2) If the Magistrate or Court considers the accused* to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be, † [and if the accused is found to be of unsound mind and incapable of making his defence, shall deal with such accused in accordance with the provisions of section 466].

469. When the accused appears to have been insane.

there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Notes—Where a Magistrate finds after examination of some of the prosecution witnesses, that the accused committed the offence, while

* The word "person" was omitted by s. 323 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were by *ibid.*

was suffering from temporary insanity, he should act under ss. 470, 471 of the Code. He is not competent to discharge him under s. 253, if it does not appear that the accused is of unsound mind. 2 Weir. 582.

Person acquitted on such grounds to be detained in safe custody. 471. (1) Whenever * [the finding] states that the accused person committed the act alleged, the Magistrate or Court before whom such act would, but for the incapacity found, have constituted an offence, in order such person to be † detained in safe custody in such place and manner as the Magistrate or Court thinks fit, ‡ [and shall report the action taken to the Local Government,] §

¶ [Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Local Government may have made under the Indian Lunacy Act, 1912.] ¶

** [(2)] The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector-General of Prisons under †† section 473 or section 474.

--Notes.--When an offence has been committed by a lunatic he should be kept in a place of safe custody. 25 Bnm. L. R. 286-25 Cr. L. J. 348. In such a case the Court can itself direct detention in a

* These words were substituted for the words "such judgment" by s. 124 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This word was substituted for the word "kept" by *ibid.*

‡ These words were inserted by *ibid.*

§ The words "and shall report the case for the orders of the Local Government" were repealed by s. 3 and Second Schedule of the Repealing and Amending Act, 1914 (X of 1914).

¶ This Provision was inserted by s. 124 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† Original sub-sections (2) and (3) of section 471 were repealed by the Indian Lunacy Act, 1912 (IV of 1912).

** Original sub-section (4) was renumbered "(2)" by s. 124 of the Code of Criminal Procedure (Amendment) Act 1923 (XVIII of 1923).

†† The word and figures "section 472" were repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

jail or asylum. 8 L. B. R. 290 ; see also 42 M. L. J. 72 ; See also 54 Ind. Cas. 254.

472. Lunatic prisoners to be visited by Inspector-General. [Rep. by Act IV of 1912.]

473. If such person is * [detained] under the provisions of section 466, and † (in the case of a person detained in a jail, the Inspector General of Prisons, or, in the case of a person detained in a lunatic asylum, the visitors of such asylum or any two of them) shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court may, if it thinks fit, order the person to be released, or to be detained in custody or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum. and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

474. (1) If such person is ‡ [detained] under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be § [released] without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be § [released], or to be detained in custody or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum. and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(2) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his § [release] or detention as it thinks fit.

* This word was substituted for the word "confined" by s. 125 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "such Inspector-General or visitors" by *ibid.*

‡ This word was substituted for the word "confined" by s. 126 Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

§ This word was substituted for the word "discharged" by

|| This word was substituted for the word "discharge"

* [475. (1) Whenever any relative or friend of any person detained under the provisions of section 466 or section 471 desires that he shall be delivered to his care and custody, the Local Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such Local Government that the person delivered shall—

- (a) be properly taken care of and prevented from doing injury to himself or to any other person, and
- (b) be produced for the inspection of such officer, and at such times and places, as the Local Government may direct, and
- (c) in the case of a person detained under section 466, be produced when required before such Magistrate or Court,

order such person to be delivered to such relative or friend.

of any offence the trial of his being of unsound mind, the inspecting officer if at any time to the knowledge of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court; and, upon such production, the Magistrate or Court shall proceed in accordance with the provisions of section 468, and the certificate of the inspecting officer shall be receivable as evidence.]

Notes.—The only Court competent to exercise the powers under this

sel under this section and then transferring the same to another Magistrate for disposal, 30 C. W. N. 276=43 C. L. J. 311=27 Cr. L. J. 385=53 C. 350 What a Court has to decide under this section is (1) whether an offence of the kind contemplated appears to have been committed and (2) whether it is expedient in the interests of justice that it

that such enquiry should to a proceeding in that plaint thereof in writing 46 C. L. J. 40=104 Ind. L. 718. The preliminary 328. Although it is desirable that the Court passing an order under this section should state reasons for the order, still an order without reasons is not illegal, 21 S. L. R. 43. It is not customary to prosecute persons under this section in mere matters of oath against oath which may be a question of public policy rather than a question of law. 39 M. L. T. 414=105 Ind. Cas. 831, =A. I. R. 1927 Mad. 996.

* [476A. The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), in any case in which such former Court has neither made a complaint nor rejected a complaint; and, where the provisions of section 476

Notes.—Upon a proper construction of ss. 476, 476A and 476B, there would lie an appeal from the District Judge in the High Court where the Munsif has refused an application made to him under s. 476 to make a complaint, 17 Pat. L. T. 114=27 Cr. L. J. 189=5 Pat. 262=94 Ind. Cas. 593

* See Foot-note * at p. 273.

* [476B. Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476A or Appeals, against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under section 476, and if it makes such complaint, the provisions of that section shall apply accordingly.]

Notes.—Where the Collector acting under this section sanctions a prosecution and directs the case to be laid before a Magistrate having jurisdiction, it can be taken as an order making a complaint. 27. Cr. L. J. 523.

477. (Power of Court of Session as to such offences committed before itself). Omitted by s. 129 of Act XVIII of 1923.

478 (1) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court, the case under the inquiry, the trial may be.

(2) For the purposes of an inquiry under this section the Civil of Chapter XXXIII to cases where that Chapter applies) and shall be deemed to have been held by a Magistrate.

* See foot-note * on p. 273, *supra*.

† The words and figures “subject to the provisions of” were omitted by s. 28 of the Criminal Law Amendment (XII of 1923).

‡ These words and figures were inserted by *ibid*. 1911

this section the Court exercises criminal jurisdiction. 45 C. 169.

481. (1) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(2) If the offence is under section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting and the nature of the interruption or insult.

Notes.—The direction contained in this section is mandatory. 10 C. W. N. 1062=4 C. L. J. 415=4 Cr. L. J. 210. The omission to record the statement of a legal practitioner is a fatal defect. 37 C. L. J. 535=75 Ind. Cas. 542; see also 25 Cr. L. J. 588; 1923 Lab. 88.

482. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, Procedure where Court considers that case should not be dealt with under section 480. shall forward the case to a Magistrate of the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

Notes.—Vide 12 W. R. Cr. 18; 35 C. 161.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877,* shall be deemed to be a Civil Court within the meaning of sections 480 and 482. When Registrar or Sub-Registrar is to be deemed a Civil Court within sections 480 and 482.

* See now the Indian Registration Act, 1908 (XVI of 1908).

Notes.—Although it appears from this section that the Local Government may constitute a Sub Registrar a Court for the purposes of certain sections, as those dealing with contumacious contempts, still, from the fact of authorisation under this section being deemed necessary, it is to be implied that he is not to be considered a Court for ordinary purposes. 12 B. 36.

484. When any Court has under section 480 * [or section 482] adjudged an offender to punishment * [or for-
 Discharge of offender warded him to a Magistrate for trial] for re-
 on submission or spo- fusing or omitting to do anything which he
 logy. ; was lawfully required to do or for any inten-
 tional insult or interruption, the Court may,
 in its discretion, discharge the offender, or remit the punishment
 on his submission to the order or requisition of such Court, or on
 apology being made to its satisfaction.

Notes.—Vide 15 Ind. Cas. 983=13 Cr. L. J. 567; 14 Cr. L. J. 687.

485. If any witness or person called to produce a document or
 thing before a Criminal Court refuses to an-
 swer such questions as are put to him or to pro-
 duce any document or thing in his possession
 Imprisonment or com- or power which the Court requires him to pro-
 mital of person refus- duce, and does not offer any reasonable excuse
 ing to answer or pro- for such refusal, such Court may, for reasons
 duce document. to be recorded in writing, sentence him to simple imprisonment, or
 by warrant † under the hand of the presiding Magistrate or Judge
 commit him to the custody of an officer of the Court for any term
 not exceeding seven days, unless in the meantime such person con-
 sents to be examined and to answer, or to produce the document or
 sal, he may be dealt
 section 482, and
 ter, shall be deemed

Notes.—In criminalising or irrelevant questions need not be answered
 10 B. 185; 13 B. 185. This section has no application where proceed-
 ings are not taken there and there. 13 M. 424.

* These words were inserted by s. 2 and first Schedule of the Repeal-
 ing and Amending Act, 1914 (X of 1914).

† See Sch. V, Form XXXIX *infra*.

486. (1) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by an officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the presidency-towns, to the High Court.

Notes.—Vide 4 M. H. C. R. 140 ; Rai. Un. Rep. Cr. C. 978.

487. (1) Except as provided in sections* 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, † shall try any person for any offence referred to in section 195 when such offence is committed before himself or in contempt‡ of his authority, or is brought

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

* The figures " 477 " were omitted by s. 130 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The words " and the Recorder of Rangoon ", were repealed by the Lower Burma Courts Act, 1900 (VI of 1900). This Act has since been repealed by the Repealing and Amending Act, 1923 (XI of 1923).

‡ As to trials for contempt of authority of a Criminal Court or Magistrate in British Baluchistan, see the British Baluchistan Criminal Justice Regulation, 1896 (VIII of 1896).

under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session, or, High Court from himself committing any case to such Court.

Scope.—The prohibition under this section extends only to the conviction of an offence of a Magistrate.

conviction from that offence. 2
 terms of the section are wide enough
 2 C. W. N. 246=7 C. L. J. 70=7

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate child, he shall be liable to maintain itself, Presidency Magistrate of the first class, for such person to his wife or such hundred] rupees in y the same to such

(2) Such allowance shall be payable from the date of the order, or if so ordered, from the date of the application for maintenance.

* These words were substituted for the word "fifty" by s. 131 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

(3) If any person so ordered * [fails without sufficient cause] to comply with the order, any such Magistrate may, for every breach of the order issue a warrant† for levying the amount due in manner hereinbefore provided for levying fines,‡ and may sentence § such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment is sooner made:

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing :

¶ [Provided, further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.]

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuse to live with her husband or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :

* These words were substituted for the words "wilfully neglects" by s. 131 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923).

† See Sch. V, Form XLI, *infra*.

‡ See ss. 386 to 389, *supra*.

§ See Sch. V, Form XL, *infra*.

¶ This proviso was added by s. 131 of the Code of Criminal Procedure (Amendment) Act. 1923 (XVIII of 1923).

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any orders so made may be set aside for good cause shown, on application made within three months from the date thereof. *

† [(7)] The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

† [(8) †] Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

Scope—This section provides for ordering maintenance where there is neglect or refusal. 4 Bur. L. J. 11=88 Ind. Cas. 479=26 Cr. L. J. 831. The words "unable to maintain itself in s. 488 seem to mean 'unable to earn a livelihood for itself such as an adult person might earn without depending on any other person. 85 Ind. Cas. 375=26 Cr. L. J. 535. So long as the husband does not maintain the wife, either by payment of alimony or otherwise the Magistrate's

to nothing i. e. cancellation of the order granting maintenance, would also come within the meaning of the word 'alternative'. 48. M. 503. Under this section a Magistrate making an order for maintenance cannot fix the rate at anything more than one hundred rupees per mensem. 28 Bom. L. R. 1299=98 Ind. Cas. 83=28 Cr. L. J. 51=A. I. R. 1927 Bom. 46. The expression 'resided' in cl (8) of section 488 includes a temporary residence and is not confined to permanent residence. 49 A. 479=25 A. L. J. 435=rnr Ind. Cas. 670. Section 488 only permits of the Court to direct a monthly payment of money. 26 Bom. L. R. to order a grant of grain allowance. 82 Ind. Cas. 279. A conditional order under this section. This section. 82 Ind. Cas. 279. A conditional order the husband is to take the wife and

* Original sub-section (7) was omitted by *ibid.*

† Sub-sections (8) and (9) were re-numbered respectively (7) and (8) by s. 131 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were 'substituted for the words "The accused may be proceeded against" by *ibid.* 111'

maintain her and in default to pay maintenance at a fixed rate is illegal. 93 Ind. Cas. 1052. Where the husband is ready to receive his wife the Magistrate must make no inquiry from the wife as to why she is not willing to go and live with him. 22 P. L. R. 233.

*[489. (1)] On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit. Provided that if he increases the allowance the monthly rate of † [one hundred] rupees in the whole he not exceed-
 Alteration in allow-
 ance.

‡[(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order, or, as the case may be, vary the same accordingly.]

Notes—This section is sufficiently wide to enable the Magistrate to reduce the maintenance already allowed. 48 M. 503. Alteration refers to an alteration in amount and not to a stoppage. 5 A. 226; 19 A. 50 (F. B). Change in circumstances refers to pecuniary change. 21 P. R. Cr 1894

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.
 Enforcement of order
 of maintenance.

* This section was re-numbered by s. 132, *ibid.*

† These words were substituted for the word "fifty" by *ibid.*

‡ This sub-section was added by *ibid.*

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus*. 491. (1) * [Any High Court] may whenever it thinks fit, direct,—

- (a) that a person within the limits of its † appellate criminal jurisdiction] be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the Governor-General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and
- (f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) ‡ [The High Court] may, from time to time, frame rules to regulate the procedure in cases under this section.

3. Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818, Madras Regulation II of

* These words were substituted for the words "Any of the High Courts of Judicature at Fort William, Madras and Bombay" by s. 30 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† These words were substituted for the words "ordinary original civil jurisdiction" by *ibid.*

‡ These words were substituted for the words "Each of the said High Courts" by s. 30 of the Criminal Law Amendment Act, 1923 (XII of 1923).

1819, or Bombsy Regulation XXV of 1827, or the State Prisoners Act, 1850, * or the State Prisoners Act, 1858.†

Scope.—The proceedings by way of *habeas corpus* are proceedings calling upon a person having custody of a prisoner to produce him and demonstrate under what authority he holds him in custody. If the authority be a legitimate authority binding on the officer complying with it, he is bound to obey the order of that authority and the Court cannot interfere. All that the High Court can do is to see that there is no patent defect visible in the authority by which the person having custody claims to

Code of Criminal Procedure. The provisions of the Bengal Criminal Amendment Act, 1898, are not applicable to the provisions of s. 31 C. W. N. 593.

— High Court cannot issue a writ of *habeas corpus* against a person arrested by a person authorised under s. 10 of the Sind Encumbered Estate Act. 99 Ind. Cas. 930=28 Cr. L. J. 194.

§491A. Any High Court established by letters patent may exercise the powers conferred by section 491 in the case of any European British subject within such territories, other than those within the limits of its appellate criminal jurisdiction, as the Governor-General in Council may direct.]

* XXXIV of 1850. † III of 1858.
 † Section 491A was inserted by s. 31 of the Criminal Law Act, 1923 (XII of 1923).

PART IX.

Supplementary Provisions.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

492. (1) The Governor-General in Council or the *Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(2) † The District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below ‡ (such rank as the Local Government may prescribe in this behalf) to be Public Prosecutor for the purpose of § (any case.)

Notes—This section applies only to a Public Prosecutor appointed by Government, and not to a person specially appointed to conduct a case. 2 Weir, 653; see also 8A. 291. A public prosecutor represents the Crown, as such he should discharge his duties fairly and fearlessly. 21 C. W. N. 28=42 C. 422.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution.

cution, and the pleader so instructed shall act therein, under his directions.

Notes—Where the Public Prosecutor has charge of the prosecution the pleader instructed by a private person including the agent of a railway administration, shall, it is enjoined, act under the directions of the Public Prosecutor. A. I. R. 1925 Pat. 755 ; see also 29 P. R. 1886 ; 11 B. H. C. R. 102 ; 13 B. 391.

494. Any Public Prosecutor * may, with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person † either generally or in respect of any one or more of the offences for which he is tried ; and upon such withdrawal,—

- (a) if it is made before a charge has been framed, the accused shall be discharged ‡ [in respect of such offence or offences] ;
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted ‡ [in respect of such offence or offences].

Notes—The effect of withdrawal from the prosecution is—

I. L. J. 243 211
M. 35, 5 M. L.
before the ver-
The Court may

40 C. 1705 ; 20 C. W. N. 880 ; 72 Ind. Cas. 361. A complainant cannot withdraw. 4 Pat. L. T. 400. An acquittal under this section bars a retrial. 40 M. 976 ; 23 Cr. L. J. 305 ; 66 Ind. Cas. 657 ; 9 N. L. R. 16.

* The words "appointed by the Governor General or Council or the Local Government" were omitted by s. 134, *ibid*.

† These words were inserted by *ibid*.

‡ These words were added by s. 134 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

495. (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any

Permission to conduct prosecution.

person other than an officer of police below the rank to be prescribed by the Local Government in this behalf* but no person, other than the Advocate General, Standing Council, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

Notes—When a Magistrate has after due consideration exercised the discretion allowed to him by s. 495, and allowed counsel to appear on behalf of the prosecution, the High Court cannot, as a Court of Session, overrule the order of the Magistrate and direct him to refuse to allow counsel to appear. 2 Weir 665. The Criminal Courts have no jurisdiction to acquit accused person, on a motion for a withdrawal of the case by the Police Inspector, who is specifically permitted to conduct the prosecution under s. 495. 10 Cr. L. J. 501 = 4 Ind. Cas. 132.

CHAPTER XXXIX. †

OF BAIL.

In what cases bail to be taken.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an

* The words "with the previous sanction of the Government-General in Council", were omitted by s. 2 and Sch. 1 of the Devolution Act, 1920 (XXXVIII of 1920).

† The provisions of this Chapter and of Chapter XLII apply, as far as may be, to bail given and bonds executed under s. 132 (4) of the Railways Act, 1890 (IX of 1890).

officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer, or at any stage of the proceedings before such Court to give bail, such person shall be released on bail : Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond* without sureties for his appearance as hereinafter provided.

†[Provided, further, that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3)].

Notes.—The provision in s 107 Cl. (4) of the Criminal Procedure Code, that a Magistrate before whom a person is sent under that section "may arrest or in his discretion detain such person in custody until the completion of inquiry" is not subject to or controlled by this section, 1912 M. W. N 169—36 M. 474. Refusal of bail is contrary to the spirit of the provisions of Chapter VIII. 27 Cr. L. J. 935.

497 (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of †[an offence punishable with death or transportation for life].

§[Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed †[a non-bailable offence,] but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending

* See S 11 V, Form XLII, *infra*.

† This proviso was added by s 135 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

‡ These words were substituted for the words "the offence of which he is accused" by s. 136, *ibid*.

§ This proviso was added by *ibid*.

|| These words were substituted for the words "such offence".

such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

† [(3) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2) shall record in writing his or its reasons for so doing.]

‡ [(4) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to bear judgment delivered.]

† [(5) A High Court or Court of Session and, in the case of a person released by itself, any other Court may cause any person who has been released under this section to be arrested and may commit him to custody.]

Notes.—The rule laid down in this section, for the guidance of Courts other than the High Court is a rule founded upon justice and equity and one that should be followed by the High Court as well as

remanded. 6 M. 63=2 Welw. 409. The question of releasing an accus-

th what the legis-

on is altered by the

L. J. 171=6 Bur.

relief under s. 497

Court regarding the

* These sub-sections were inserted by *ibid.*

† This sub-section was substituted for original sub-section (3) by s. 36 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923)

to be withheld merely as a punishment and the requirements as to bail are merely to secure the attendance of the accused at the trial. The test is to be applied by reference to the following considerations amongst others : (1) the nature of the accusation, (2) the nature of the evidence in support of the accusation : (3) the severity of the punishment which conviction will entail : (4) the character of the sureties that is to say, whether there are independent or indemnified by the accused : (5) the character and behaviour of the accused. 6 Pat. 802 = 102 Ind. Cas. 909. 28 Cr. L. J. 621 = 8 Pat. L. T. 557 = A. L. R. 1927 Pat. 302 ; see also 5 Raog. 276 = 104 Ind. Cas. 101 = 28 Cr. L. J. 773.

498. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive, and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Notes.—A Court of Session has power under this section to grant bail in cases of non bailable offences. 19 S. L. R. 59. This con-
 mitted sense but in the narrower sense laid down therein. 19 S. L. R. 59.
 Where no leave to appeal to Privy Council was yet granted the case can
 not be said to be under appeal so as to make the application of s. 498.
 possible. 1 N. L. R. 161.

499. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(2) If the person is released on his own bond the person releasing him shall be bound to attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

Notes.—The time and place of appearance must be specified in the bail bond. 1885 A. W. N. 44.

500. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release* to the officer in charge of the jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Notes.—This section applies where there is a surety. 38 M. 1088. In such a case increase amount of bail can be demanded. 4 P. W. R. 1912.

502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) or on bond to the warrant, shall direct the as relates to the applicants and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

Notes.—A surety bond cannot be forfeited without complying with the provisions of sub-section (2) 95 Ind. Cr. 768 = 27 Cr. L. J. 848. A Magistrate should cancel the bail bond on the application of the surety. 9 Bom. L. R. 1285.

* See Sch. V, Form XLII, *infra*.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

503. (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it

When attendance of witness may be dispensed with.

appears in a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission and procedure thereunder.

(2) When the witness resides in the territories of any Prince or Chief in India in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(3) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he, or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

(4) Where the commission is issued to such officer as is mentioned in sub-section (2), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

Notes—In granting commissions to *pardah* women the customs and habits of the people should be taken into consideration. 15 C. 775 This section allows the examination of a *ghosa* woman, who appears as witness in a case on commission. 2 Weir 659; see also 5 A. 92; 24 C. 551; 11 P. W. R. 1913 The issue of a commission lies entirely in the discretion of the Court. 8 C. 896.

504. (r) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Commission in case of witness being with- in presidency-town, Magistrate or Court issuing the commission may direct the same to* [such Presidency Magistrate, who] thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

†[(1A) When a commission is issued under this section to a Chief Presidency Magistrate, he may delegate his powers and duties under the commission to any Presidency Magistrate subordinate to him.]

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the Slave Trade Act, 1876,† section 3.

Parties may examine witnesses.

505. (1) The parties to any proceeding under this Code in which a commission is issued, may respectively forward any interrogatories in writing, which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed, § [or to whom the duty of executing such commission has been delegated] shall examine the witness upon such interrogatories.

• (2) Any such party may appear before such Magistrate or officer, by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

506. † Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate, or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the

Power of provincial Subordinate Magistrate to apply for issue of commission.

* These words were substituted for the words "the said Presidency Magistrate" by s. 137 of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† This sub-section was inserted by s. 137 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ 39 & 40 Vict., c. 46.
§ These words were inserted by s. 138 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

ends of justice, and that the attendance of such witness cannot be
 which,
 such
 reasons
 issue
 a commission in the manner hereinbefore provided or reject the
 application.

Notes—Examination of witnesses by commission is not a satisfactory mode of procedure either in civil or criminal cases. 91 Ind. Cas. 393. An issue of commission by the District Magistrate, in a case pending before a subordinate Magistrate, without referring to him is improper. 2 S. L. R. 8.

507. (1) After any commission issued under section 503 or section 506 has been duly executed, it shall
 Return of commission. be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872,* may also be received in evidence at any subsequent stage of the case before another Court.

Notes—Vide 19 C. 113; 19 B. 749.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or
 Adjournment of Inquiry or trial. other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Notes—Vide 19 C. 113.

* 1 of 1872.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

509. (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if, it thinks fit summon and examine such deponent as to the subject-matter of his deposition.

Notes.—(1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under Chapter XL, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

510. Any document purporting to be a report under the hand of any Chemical Examiner or Arristail Chemical Examiner, to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Notes.—The report of a Chemical Examiner is evidence in a criminal trial, if it bear the signature of the Examiner. The original should be produced. 6 B. L. R. App. 122 = 15 W. R. 49; 2 Weir 66r.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the sentence or order, or,

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail, in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Notes.—The certified extract contemplated by Cl. (a) of s. 511 is "a copy of the sentence or order". 11 C. P. L. R. Cr. 5

512. (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without so much delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of British India.

Notes.—It is not open to a Magistrate to decline to call for the documents desired by the complainant or to record any evidence on his behalf, on the ground that the accused has absconded and no enquiry was being then conducted; he is bound in such a case by the provisions of s. 512 2 Bom. L. R. 707. Before a deposition recorded under this section can be admitted in evidence, it must be proved that the deponent is dead, or incapable of giving evidence, or that his attendance cannot be procured without an amount of delay, expense or inconvenience, which, under the circumstances of the case, would be unreasonable. U. B. R. (1897-1901) Vol. I, 114; 10 C. 1097; 157 P. L. R. 1911=10 Ind. Cas. 119=12 Cr. L. J. 214. To satisfy the requirements of section 512 all that is necessary is proof that the accused absconded and not a finding by the Court to that effect. 6 Lah. 489.

CHAPTER XLII:

PROVISIONS AS TO BONDS.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of cognizance, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Notes.—The Court cannot require deposit in addition to bond. *R. v. Un. Cr. C. 671.* The deposit money should be returned, on the accused appearance. *11 O. L. J. 296; 19 A. L. J. 887.*

514. (1) Whenever it is proved to the satisfaction of the Court, by which a bond is forfeited, that under this Code has been taken, or of the Court of a Presidency Magistrate, or Magistrate of the first class,

or when, the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.*

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall be valid for the attachment and sale of any moveable property in endorsed by the Court within the local limits of the jurisdiction of the Court which issued it.

* See Sch. V, Forms XLIV to LIII, *infra*.

† See Sch. V, Forms XLIV to LIII, *infra*.

‡ This word was substituted for the word "distress" by s. 139 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.*

†[(7) When any person who has furnished security under section 106 or section 118 or section 562 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 514 B, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.]

Notes—An order forfeiting a surety bond or bond for good behaviour need not be passed at the same time as the conviction of the person for whom the bond is executed. 27 Cr. L. J. 326=92 Ind. Cas. 742. Under this section a surety is bound to produce the accused at the trial of the case on penalty of his security bond being enforced. 97 Ind. Cas 672. It is the duty of the surety to see that the accused does not run away but where a surety had failed to produce the accused by reason of an illegal order passed by a Magistrate which the surety was not bound to carry out and where there is no connivance and no negligence it cannot be said that the surety had acted irresponsibly so as to be penalised. 49 A. 525=25 A. L. J. 537.

‡[514A. When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 514, the Court, by whose order such bond was taken, or a Presidency Magistrate or Magistrate of the first class, may order the person from whom such security was demanded to furnish fresh security in accordance with

* The words "but the party who gave the bond may be required to find a new surety" were omitted by *ibid.*

† This sub-section was inserted by *ibid.*

‡ Section 514 A was inserted by s. 540, *ibid.*

the directions of the original order, and, if such security is not furnished, such Court or Magistrate may proceed as if there had been a default in complying with such original order.

*[514B. When the person required by any Court or officer to execute a bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.]

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate, shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Notes.—25 Cr. L. J. 445 ; 5 P. R. 1905.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Notes.—Vide 14 C. W. N. 259.

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

516A. When any property regarding which any offence appears to have been committed, or which appears to have been used, for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry.

* Section 514B was inserted by s. 140 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

† Section 515 has been declared to apply to the security required by s. 31A of the Rangoon Police Act, 1899 (Bur. Act IV of 1899.)

‡ Section 516A was inserted by s. 141 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923.)

ry or trial, and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.]

Notes—" It is proposed to add to the Chapter a new section to enable the Court to pass order for the custody or disposal of property during an inquiry.—*Statement of Objects and Reasons.*

517. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal * [by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

† [(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by sub-section (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.]

‡ [(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.]

§ *Explanation* —In this section the term "property" includes, in the case of property regarding which an offence appears to have

been committed . . . property as has been originally
control of any party, but also any
may have been converted or
exchanged, and anything acquired by such conversion or exchange,
whether immediately or otherwise.

Notes.—Where a Magistrate finds the accused not guilty of the
offence of cheating . . .

ced by such an order should have
Ind. Cas. 452. Cash is not strictly s
ing of section 517, except in so far as it is capable of being possessed and
identified in specie. 89 Ind. Cas. 259 = 26 Cr. L. J. 1315.

518. In lieu of itself passing an order under section 517,
the Court may direct the property to be
Order may take form of reference to District or Sub-divisional Magistrate. delivered to the District Magistrate, or to a Sub-divisional Magistrate who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Notes.—In a case under Chapter 39, the Magistrate is bound to base
his order upon the finding of the jury. An order under this section
should be passed only under special and urgent circumstances. 1 J. G. 11.

* 519. When any person is convicted of any offence which
includes, or amounts to, theft or receiving
Payment to innocent purchaser of money stolen property, and it is proved that any
found on accused. other person has bought the stolen property
from him without knowing, or having reason
to believe, that the same was stolen, and that any money has on his
arrest been taken out of the possession of the convicted person,
the Court may on the application of such purchaser and on the
restitution of the stolen property to the person entitled to the
possession thereof, order that out of such money a sum not exceeding
the price paid by such purchaser be delivered to him.

Notes.—This section only authorises payment to a purchaser of
stolen property who buys in ignorance of theft, of compensation out of
any money found in possession of the party guilty of theft. 2 Weir. 617 ;

A. W. N. 1886, 291. An order for compensation cannot be made to

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

Notes—A District Magistrate is a Court of Revision as regards all Magistrates in his district. 2 Weir 673. A District Magistrate has no jurisdiction in case of appeal. 13 Bom. L. R. 131=9 Ind. Cas. 947=12 Cr. L.J. 169. Under this section an order restoring a child to his parent cannot be passed. 27 Cr. L.J. 574.

521. (1) On a conviction under the Indian Penal Code section 292, section 293, section 501, or, section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed.

522. (1) Whenever a person is convicted of an offence attended by criminal force * [or show of force or by criminal intimidation] and it appears to the Court that by such force * [or show of force or criminal intimidation] any person has been dispossessed of any immovable property, the Court may, if it thinks fit, * [when convicting such person or at any time within one month from the date of the conviction] order † [the person dispossessed] to be restored to the possession of the same.

* These words were inserted by s. 143 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were substituted for the words "such person" b

(2) No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

*(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.]

Notes—The object of this section is to enable the Criminal Court, by its orders, to restore the status of things which existed at the time of the commission of the offence.

has been dis-
25 A. 341; 25
o law, that an
ual judgment.

14 Cr. L. J. 172 = 19 Ind. Cas. 172. An order under this section directing restoration of possession of land is quite justified when it was found that the defendant was preventing entry by show of force.

any finding that any criminal force was used, the 12 Cr. P. Code is without jurisdiction. See also 100 Ind. Cas. 544. An order within a month of the disposal of a case against an order of the lower court.

99 Ind. Cas. 803 = 40 Cr. L. J. 191. An order under s. 522 Cr. P. Code, can only be binding between the parties to the order and can have no finality in favour of one who was not a party and did not claim under any party. 86 Ind. Cas. 744.

523. (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall in such case, issue a proclamation specifying

Procedure where owner of property seized unknown.

the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

Notes.—When a Magistrate issues an order under this section, he is bound to state in the order the nature of the property, and the names of the persons claiming it, and the date of the proclamation. 24 M. L. J. 1=18 Ind. Cas. 171=14 Cr. L. J. 27=1913 M. W. N. 851.

524. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found, is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

(2) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Notes.—Vide 22 C. 761 ; 40 B. 200 ; 5 P. L. J. 321.

525. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, * [or if the Magistrate] to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, † [or that the value of such property is less than ten rupees] the Magistrate may at any time direct it to be sold ; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

* These words were substituted for the words "or the Magistrate" a. 144 of the Code of Criminal Procedure (Amendment) Act, (XVIII of 1923).

† These words were inserted by *ibid.*

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer, 526. (1) Whenever it is made to appear for case or itself try, it, to the High Court;—

- (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or
- (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
- (e) that such an order is expedient for the ends of justice, or is required, by any provisions of this Code; it may order—
 - (i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;
 - (ii) that any particular* case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;
 - (iii) that any particular † case or appeal be transferred to and tried before itself; or
 - (iv) that an accused person be committed for trial to itself or to a Court of Session.

* The word "Criminal" was omitted by s. 145 of the Code, of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

† The word "such" was omitted by *ibid.*

* [(8) If, in the course of any inquiry or trial, or before the commencement of the hearing of any appeal, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under this section in respect of such case or appeal, the Court shall adjourn the case or postpone the appeal for such a period as will afford a reasonable time for the application to be made and an order to be obtained thereon.]

* [(9) Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Session shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.]

Notes—The convenience of the accused has to be considered rather than that of the complainant for transferring a case. 27 Cr. L. J. 563. A refusal to adjourn the case without just cause is by itself a sufficient ground for transfer. 27 Cr. L. J. 935. This section has been widened in scope by the deletion of the word "Criminal" and an enquiry under section 14, Legal Practitioner's Act, which is being conducted by a Magistrate is a "case" within the meaning of this section. 27 Cr. L. J. 476 = 93 Ind. Cas. 700 = 27 P. L. R. 225. In an application for transfer what has to be established is a belief in the mind of the accused person that his case will not be fairly tried. 97 Ind. Cas. 38. The exercise by the Magistrate of the discretion vested in him by law in granting bail is no

includes a proceeding under s. 145. 6 Pat. 553. An order to transfer in case should not be made without giving notice to the opposite party, but such an order is not illegal. 28 Cr. L. J. 38 = 99 Ind. Cas. 70.

* Sub-sections (8) and (9) were substituted for sub-section (8) by 15/12.

*[526A. (r) Where any person subject to the †[Naval Discipline Act] or to the ‡Army Act or to the Air Force Act§ is accused of any offence such as is referred to in proviso (a) to section 41 of the Army Act, the Advocate General shall, if so instructed by the competent authority, apply to the High Court for the committal or transfer of the case to that High Court and thereupon the High Court shall order that the case be committed for trial to or be transferred to itself and shall thereafter proceed to try the case by jury.

(2) The Governor-General in Council may, by notification in the Gazette of India, declare any officer to be the competent authority for the purpose of issuing instructions under sub-section (1) in regard to any class of cases specified in the notification.]

527. (1) The Governor-General in Council may, by notification in the Gazette of India, direct the transfer of any particular ¶case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court, to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

528. ¶[(1) Any Sessions Judge may withdraw any case from, or recall any case which he has made over to, any Assistant Sessions Judge subordinate to him.]

Sessions Judge may withdraw cases from Assistant Sessions Judge.

* Section 526A was inserted by s 32 of the Criminal Law Amendment Act, 1923 (XII of 1923).

† 29 & 30 Vict., c. 109.

‡ 44 & 45 Vict., c. 58.

§ 7 & 8 Geo. c. 51.

¶ The word "case" in this section is defined in s 16 of the Code of Criminal

* [(2)]. Any Chief Presidency Magistrate, District Magistrate or District or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

† [(3)] The Local Government may authorize the District Magistrate to withdraw from any Magistrate subordinate to him either such classes of cases as he thinks proper, or particular cases.

‡ [(4)] Any Magistrate may recall any case made over by him under section 192, sub-section (2), to any other Magistrate and may inquire into or try such case himself.]

* [(5)] A Magistrate making an order under this section shall record in writing, his reasons for making the same.

‡ [(6) The head of a village under the § Madras Village-police Regulation, 1816, or the § Madras Village-police Regulation, 1821, is a Magistrate for the purposes of this section.]

† Notes.—This section does not require in terms that a Magistrate should give any reason for a transfer, but it is a sound rule of practice that there should be something on the record showing why the order was made. The mere omission to record reasons does not vitiate the order. 15 Pat. 229=97 Ind. Cas. 974=27 Cr. L. J. 1214. A transfer of a case under this section is not illegal for want of notice to the opposite party. This section does not require issue of notice. 93 Ind. Cas. 75=6 Lah. 547=27 P. L. R. 80; see also 102 Ind. Cas. 213=28 Cr. L. J. 517.

... (2) and (3) and numbered (2) (3) and

* CHAPTER XLIVA.

SUPPLEMENTARY PROVISIONS RELATING TO EUROPEAN AND INDIAN
BRITISH SUBJECTS AND OTHERS.

528A. (1) Where, in any case in which the provisions of Chapter XXXIII do not apply, any person claims to be dealt with as an European or Indian British subject, or where any person claims to be dealt with as an European (other than an European British subject) or an American, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall deal with him accordingly.

(2) When any such claim is rejected by the Magistrate and the person by whom it was made is committed by the Magistrate for trial before the Court of Session, and such person repeats the claim before such Court, such Court shall, after such further inquiry, if any, as it thinks fit, decide the claim, and shall deal with such person accordingly.

(3) When any Court before which any person is tried rejects any such claim as aforesaid the decision shall form a ground of appeal from the sentence or order passed in such trial.

Notes.—Before commitment such claim can be made at any time. 51 C. 980.

528B. If in any such case an European or Indian British subject or an European (other than an European British subject) or an American does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before and rejected

by the committing Magistrate, it is not repeated before the Court in which such person is committed, he shall be held to have relinquished his right to be dealt with as an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall not assert it in any subsequent stage of the case.

Notes.—Claim on the ground of status when made.—84 Ind. Cas. 929=26 Cr. L. J. 385; see also 29 C. W. N. 447=84 Ind. Cas. 1041=52 C. 347.

528C. Where a person, not being an European British subject, is dealt with as an European British subject or, not being an Indian British subject, is dealt with as an Indian British subject, or, not being an European (other than an European British subject) or American, is dealt with as an European or American, and such person does not object, the inquiry, commitment, trial, or sentence, as the case may be, shall not, by reason of such dealing, be invalid.

528D. (1) Unless there is something repugnant in the context, all enactments made by the Governor-General in Council or the Indian Legislature which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

(2) Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects.]

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings. 529. If any Magistrate not empowered by law to do any of the following things, namely :—

- (a) to issue a search-warrant under section 98 ;
- (b) to order, under section 155, the police to investigate an offence ;
- (c) to hold an inquest under section 176 ;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
- (e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b) ;
- (f) to transfer a case under section 192 ;
- (g) to tender a pardon under section 337 or section 338 ;
- (h) to sell property under section 524 or section 525 ; or
- (i) to withdraw a case and try it himself under section 528 ;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Notes—This section comes into operation in cases of erroneous transfer. 5 C. W. N. 636 ; 35 C. 243 ; 2 C. L. J. 614 ; 4 C. W. N. 821 ; 36. C. 370.

Irregularities which vitiate proceedings. 530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely :—

- (a) attaches and sells property under section 88 ;
- (b) issues a search-warrant for a letter, parcel or other thing in the Post Office, or a telegram in the Telegraph Department ;
- (c) demands security to keep the peace ;
- (d) demands security for good behaviour ,
- (e) discharges a person lawfully bound to be of good behaviour ;

- (f) cancels a bond to keep the peace;
 - (g) makes an order under section 133, as to a local nuisance;
 - (h) prohibits under section 143, the repetition or continuance of a public nuisance;
 - (i) issues an order under section 144;
 - (j) makes an order under Chapter XII;
 - (k) takes cognizance, under section 190, sub-section (1), clause (c), of an offence;
 - (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate;
 - (m) calls, under section 435, for proceedings;
 - (n) makes an order for maintenance;
 - (o) revises, under section 515, an order passed under section 514;
 - (p) tries an offender;
 - (q) tries an offender summarily; or
 - (r) decides an appeal;
- his proceedings shall be void.

Notes—The proceedings of a summary trial of a case not so triable are, void. Col. Dig., 43 of 1876. Where a person is convicted by a Bench of five Magistrates, one of whom had not heard all the evidence, the conviction is bad. 38 M. 304;

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the proceedings in wrong place, of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Notes—This section applies to a case where the Magistrate has jurisdiction over the place. 26 M. 640—2 Weir; has no jurisdiction, venue, and is curable under this section. 2 P. R. 1903 Cr.—9 P. L. R. 1903; see also 17 A. 36—A. W. N. 1894, 195; U. B. R. 1904, 1st Cr. Pro. Code, 10. When an offence is committed within the jurisdiction of a Sub-Divisional Magistrate in one district, but is tried by a Magistrate

in another district, the irregularities of the trial is cured by this section. 30 M. 94; 21 A. 972.

532. (1) If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings accept the commitment if it considers that the accused has not been injured thereby, unless during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(2) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

Notes—Vide 17 M. 402; 3 A. 258; 20 Cr. L. J. 416; 22 B. 112.

Non-compliance with provisions of section 164 or 364. 533. (1) If the Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 364 is tendered or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, 1872* section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(2) The provisions of this section apply to Courts of Appeal, Reference and Revision.

Notes—This section is inserted in order to all cases in which

—

Omission to give information under section 447. † [534. An omission to inform under section 447 any person of his rights under Chapter XXXIII shall not affect the validity of any proceeding.

* 1 of 1872.

† Section 534 was substituted by s. 34 of the Criminal Law Amendment Act, 1923 (XII of 1923).

535. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Notes.—Under this section mere omission or irregularity in the charge will not justify a reversal of an order of the lower Court unless in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby. 53 C. 738=98 Ind. Cas. 191; 100 Ind. Cas. 227; 99 Ind. Cas. 1602; 45 C. L. J. 474. As to where the accused is prejudiced, vide, 54 C. 476.

Trial by jury of offence triable with assessors.

536. (1) If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial with assessors of offence triable by jury.

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Notes.—Where a case was triable by jury, but was tried with the aid of assessors and no objection was taken at the trial, held that the mere fact that the assessors found the accused guilty, but the Judge differing from their opinion had convicted them would not make the trial invalid, in as much as no objection was taken at the trial. 23 M. 682=2 Weir 331; see also 99 Ind. Cas. 849=28 Cr. L. J. 177. But a Court cannot treat the verdict of the jury as a verdict of assessors in cases triable with assessors. 25 C. 555.

537. Subject to the provisions hereinafore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

Findings or sentence when reversible by reason of error or omission in charge or other proceedings.

R. 1927 Nag. 117. The disobedience of a definite prohibitory provision of the Code constitutes an illegality, not curable under s. 537. 94 Ind. Cas. 217=27 Cr. L. J. 669. This section is applicable only to failure to comply with some provision to the course of a general compliance with the whole. A. I. R. 1925 Nag. 147. There is no authority for the view that the non-compliance with a mandatory provision of the Criminal Procedure Code cannot in any circumstances be cured under s. 537. The process of the Code has been held to be valid. Ind. Cas. 312=26 Cr. L. J. 1230.

538. No [attachment] made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of [attachment] or other proceedings relating thereto.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court and persons before whom affidavits may be sworn. Court of any officer, of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Notes.—An affidavit sworn before a Bench Magistrate of a District Court is one of the High Court. A. I. R. 1925 Pat. 755.

* This word was substituted for the word "distress" by s. 149, *ibid.*

* [539A. (1) When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Code, and allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

An affidavit to be used before any Court other than a High Court under this section may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

Affidavits under this section shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable grounds to believe to be true, and, in the latter case, the deponent shall clearly state the grounds of such belief.

Notes.—A person renders himself liable to prosecution for false statements made in an affidavit in support of an application under s. 439 as required by section 539A. 28 Cr. L. J. 168-99 Ind. Cas. 600—A. I. R. 1927 Sind. 128.

(2) The Court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended].

†[539B. (3) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost :

Provided that, in the case of a trial by jury or with the aid of assessors, the Judge shall not act under this section unless such jury or assessors are also allowed a view under section 293].

* Section 539 A was inserted by s. 350, *ibid.*

† Section 539B was inserted by s. 350 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

Notes.—A local inspection by Magistrate is only permitted by s. 539B for the purpose of properly appreciating the evidence in the case and especially the effect of a "dead" witness. A "dead" witness is irregular and his evidence is not admissible. J. 495 = memorandum of evidence and the Court can show J. 131.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Notes.—Under this section the Court is bound to summon and examine any witnesses whose evidence seems to be essential to the just decision of the case. 6 C. W. N. 98. Neither the prosecutor nor the accused can, as of right, cross-examine a witness summoned and examined by the Court under this section. S. C. 275, Oudh. Where the accused have exhausted the power of summoning witnesses by filing their first list of witnesses they could not summon any other witness otherwise than by moving the Court to act under this section. 11 A. L. J. 986 = 15 Cr. L. J. 564 = 36 A. 13 = 22 Ind. Cas. 740. A witness summoned under s. 540 can be examined by both parties. Suggestion of questions by the defence to the Court and putting such questions through the Court is not cross-examination. 47 A. 147. This section is not controlled by s. 342 and when a witness is examined by the Court *suo motu* after the witnesses for the prosecution had been examined and the accused had once been examined under s. 342, there is no duty on the Court to examine the accused again under section 342. 89 Ind. Cas. 60 = 16 Cr. L. J. 418. Although it is not a condition that the accused has to

L. J. 325.

This section provides that any Court may, at any stage of an inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined.

and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the fair decision of the case. 1 Rang. 308=2 Bn
the terms of this section are
discretion thereunder very can
meets were heard and the case was posted for judgment for a certain day, the examination of prosecution witnesses thereafter cannot be justified. 27 C. W. N. 675=37 C. L. J. 415=24 Cr. L. J. 957. The Court may summon witnesses and if the prosecution declines to examine them, the Court may thereupon acting on its own initiative cause them to be produced. 37 C. L. J. 173=24 Cr. L. J. 593.

*[540A. (1) At any stage of an inquiry or trial under this Code, where two or more accused are before the Court, if the Judge or Magistrate is satisfied, for reasons to be recorded, that any one or more of such accused is or are incapable of remaining before the Court, he may, if such accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

Provision for inquiries and trial being held in the absence of accused in certain cases.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately]

541 (1) Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place † any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail

* Section 540A was inserted by s. 151, *ibid.*
† A place so appointed is not a "prison" within the meaning of (1) (b) of the Prisons Act, 1894 (IX of 1894).

(3) When a person is removed to a criminal jail under "subsection (2)" * he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure† or

(b) if

the Code of Civil Procedure

Notes.—The terms "prison" and "jail" do not include police lock up. 7 L. B. R. 62. A Court in awarding sentence can not divide the imprisonment in different jails. Rat. Un. Cr. C. 827.

542: (1) Notwithstanding anything contained in the *Prisoner's Testimony Act, 1869*,† any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

(a) The officer in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

543: When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Notes.—Vide 16 W. R. 61, 36 C. 808.

* The words within quotations have been substituted by Act 7 of 1925.

† See now the Code of Civil Procedure 1908 (V of 1908), s. 53, and the Provincial Insolvency Act, 1920 (V of 1920), s. 27.

‡ See now the Prisoners Act, 1900 (III of 1900).

544. Subject to any rules made by the Local Government, * any Criminal Court may if it thinks fit, order payment, on the part of Government of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Notes.—This section and Rule No. 11 made by the Government of Bombay under this section, regulating the payment, on the part of Government, of expenses of complainants and witnesses in cases coming before the Court.

See L. J. 637. Costs paid by arrangement can not be recovered by suit.
29 C. W. N. 1033.

545. (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms on appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

- (a) in defraying expenses properly incurred in the prosecution;
- † (b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
- ‡ (c) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.]

* The words "with the previous sanction of the Governor-General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (XXXIII of 1920).

† This clause was substituted by s. 152 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

‡ This clause was added by *ibid.*

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal be presented, before the decision of the appeal.

Notes.—There is no provision in Chapter XLII, Cr. Pro. Code or in S. 545 which empowers a Court to order payment of money as indemnity in a case of theft. 190 Ind. Cas. 151=26 Cr. L. J. 1495. In the absence of any provision to the contrary, it must be ordered.

Un. Cr. C. 407, 341; 22 B. 717; 4 Bom. L. R. 817. Under the old section compensation could not be paid to a bona fide purchaser of stolen property.

to a bona fide purchaser of a stolen property and not a pledgee or mortgagee. 46 B. 393; 1913 Bom. 22.

It is no doubt undesirable to encourage frivolous complaints by the grant of compensation under this section, but the law intends that compensation

sation could only be given to the person to whom injury has been caused; it cannot be given to the heirs of a person who has been killed. 16 C. P. L. R. 180; 10 W. R. 39. But now heirs can be paid compensation. 36 C. 302; 17 P. R. 1898; 18 P. R. 1913.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Notes.—Vide 22 W. R. 336.

Order of payment of certain fees paid by complainant in non-cognizable cases.

* [546A. (1) Whenever any complaint of a non-cognizable offence is made to a Court, the Court, if it convicts the accused, may, in addition to the penalty imposed upon him, order him to pay to the complainant—

(a) the fee (if any) paid on the petition of complaint, or for the examination of the complainant, and

(b) any fees paid by the complainant for serving processes on his witnesses or on the accused,

and may further order that, in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

(2) An order under this section may also be made by an Appellate Court, or the High Court, when exercising its powers of revision.]

Notes.—Costs of the complainant cannot be awarded where the offence is not a cognizable one. 25 Cr. L. J. 1161=81 Ind. Cas. 935.

547. Any money (other than a fine) payable by virtue of any order made under this Code, † [and the method of recovery of which is not otherwise expressly provided for] shall be recoverable as if it were a fine.

Moneys ordered to be paid recoverable as fines.

Notes.—*Vide* Rat. Un. Cr. C. 213; 23 Cr. L. J. 157; 29 C. W. N. 1033; 19 A. 112; 6 A. 96; 7 M. 563; 2 P. L. R. 1904.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith:

Copies of proceedings.

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Notes.—Where a complaint is dismissed a complainant is affected by the order of dismissal and is therefore entitled to a copy of the order of discharge. Rat. Un. Cr. C. 305; 8 C. 166=10 C. L. R. 190. An

* Section 546A was inserted by s. 153 of the Code of Procedure (Amendment) Act, 1923 (XVIII of 1923).

† These words were inserted by s. 154, *ibid.*

accused is entitled to copies of documents and copies of his defence. 14
 "B" A charge, indictment, or information, or a writ by which an
 is section, where
 the prosecution
 is entitled to a
 copy of the judgment under this section. Rat. Un. Cr. C. 73.

"549. (1) The Governor-General in Council may make * rules,
 consistent with this Code and the "Army
 Delivery to military authorities of persons liable to be tried by Court-martial. Act and the Air Force Act and † any similar law for the time being in force, as to the cases in which persons subject to "military or air force law" † shall be tried by a Court to which this Code applies, or by Court-martial, * and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, section 41, "or under the Air Force Act, section 42, "or under such Magistrate cases deliver he is accused, or detachment of the nearest "military or air force station, as the case may be" §, for the purpose of being tried by a Court-martial. * 11 11

(2) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops, stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

"550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which, may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer. 11 11 11 11 11 11 11 11 11 11

* For notification making rules as to cases in which persons subject to military law shall be tried by a Court to which this Code applies or by a Court-martial, see Gazette of India, 1902, Pt. I, p. 383.

† Substituted by Act X of 1927.

‡ Inserted by Act X of 1927.

§ Substituted by Act X of 1927.

Notes.—A police-officer cannot issue order to station-master to detain stolen goods. 36 O. C. 373. He himself may seize such property. 2 S. L. R. Cr. 82—10 Cs. L. J. 198. This section does not empower police-officers to seize other cattle mixed up with stolen cattle. 11 Cr. L. J. 99; 7 P. R. 1839 Cr.

551. Police-officers superior in rank to an officer in charge of a police-station may exercise the same powers, throughout the local areas to which they are appointed, as may be exercised by such officer within the limits of his station.

552. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of "sixteen" * years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Notes.—The purpose contemplated by this section must not be construed so as to make it in themselves, might only

not unlawful detention.
W. N. 75 (N).

553. (3) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

* The word within quotations was substituted by Act 18 of 19

(3) All compensation awarded under this section may be recovered if it were the duty of the court to award it.

directs, unless such sum is sooner paid.

Power of chartered 554. (1) With the previous sanction of the Governor General in Council, the High

for the inspection of

Power of other High Courts to make rules established by Royal Charter may, from time to time, and with the previous sanction of the Local Government, for other purposes.

(a) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be forwarded to the Government.

subordinate to it; and
(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines.

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(3) All rules made under this section shall be published in the local official Gazette.

555. Subject to the power conferred by section [554],* and by section [107] of the Government of India Act, 1915, the forms set forth in the fifth schedule, with such variation as the circum-

* These figures were substituted for the figures "553" by the

figures of the

stances of each case require, may be used for the respective purposes therein mentioned, and if used shall be sufficient,

Notes—Vide 45 C. 1095 : 38 C. L. J. 77.

556 No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material in the case is alleged to have occurred, and made an inquiry in connection with the case.

Illustration.

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.

Notes—This section is based on the maxim *Nemo debet esse judex in propria causa sua*. The expression "party or person interested" therein means a direct personal pecuniary interest however small in the result of the case and where such interest is not pecuniary, it should have substantially the same effect so as to create a reasonable suspicion of bias. 98 Ind. Cas. 405=20 S. L. R. 171=27 Cr. L. J. 1333

is not thereby rendered incompetent to try the offence or to hear an appeal from the Court in the Court Cas. 1049; Committee, of the Town proceedings. A. 483. appeal the 368

a search warrant prior to the institution of the case does not disqualify him from trying the case within the meaning of this section. 24 A. L. J. 568=27 Cr. L. J. 783=A. I. R. 1926 All. 428. Where a verbal complaint is made to a Magistrate, and subsequently a written complaint is made to him, the fact that under the order of a superior Court passed at the instance of the complainant the Magistrate records his own

In regard
Magistrate per-
and render
953=27 Cr.
ist a person
on petition
trying the

office, 28 Bom. L. R. 1302=28 Cr. L. J. 53.

557. No pleader who practises in the Court of any Magistrate in a presidency town or district, shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.

Notes—This section does not forbid a pleader to practise in any Court but forbids him to sit as a Magistrate in certain Courts. 1923 Rang. 119.

558. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

Provision for powers of Judges and Magistrates being exercised by their successors in office. [559. (1) Subject to the other provisions of this Code the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate the Chief Presidency Magistrate in a Presidency shall or the under,

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.

Notes.—Under s. 559 a complaint under s. 195 relating to an offence in connection with a proceeding in a Magistrate's Court can be made by the successors in office of the Magistrate. 7 Lah. 108=27 P. L. R. 314=95 Ind. Cas. 312.

Officers concerned in sales not to purchase or bid for property.

560. A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provisions with respect to offence of rape by a husband.

561. (1) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the case for trial for the offence.

(2) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to do so, he may, subject to such directions as may be issued by the High Court, call upon any officer of a rank or grade below that of a District Magistrate to take part in, the investigation.

*[561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.]

Notes.—This section is in no way limited or governed by s. 369 Criminal Procedure Code, and the High Court has power to reconsider the question of sentence when the ends of justice require it. 9 Lah. L. J. 42=99 Ind. Cas. 1039=28 Cr. L. J. 239. The High Court as the supreme Court

* Section 561A was inserted by s. 156 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

a search warrant prior to the 'institution' of the case does not disqualify him from trying the case within the meaning of this section, 24 A. L. J. 568=27 Cr. L. J. 783=A. L. R. 1926 All. 428. Where a verbal complaint is made to a Magistrate, and subsequently a written complaint is made to him, the fact that under the order of a superior Court passed at the instance of the complainant the Magistrate records his own evidence and is examined and cross-examined as a witness in regard

... the Magistrate per-
 ... Cas. 953=27 Cr
 ... against a person
 ... revision petition
 against an order or discharge made by the Magistrate trying the
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* Section 559 was substituted by s. 155 of the Code of Criminal Procedure (Amendment) Act, 1933 (XVIII of 1933).

(3) When there is any doubt as to who is the successor in office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Additional or Assistant Sessions Judge.

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(a) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(b) commit the man for trial for the offence.

(2) And notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct a police-officer in respect to such an offence as is referred to in sub-section (1) no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

[561A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.]

Notes—This section is no way limited or governed by s. 369 Criminal Procedure Code, and the High Court has power to reconsider the question of sentence when the ends of justice require it. 9 Lab. L. J. 42=99 Ind. Cas. 1039=28 Cr. L. J. 239. The High Court as the supreme Court

* Section 561A was inserted by s. 156 of the Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

* Criminal Procedure

of the Court must be deemed to have no more than that Court below do not

appeal may be or is, pending in the Privy Council, 49A. 247=98 Ind.

reasonable access to his legal advisers from the moment of arrest. Such interference is justified as being necessary to prevent an abuse of the process of Court or as conducing to the "ends of justice."—28 Bom. L. R. 1043=50B. 741. Under this section the High Court is at liberty to interfere with an order granting bail passed by a Sessions Judge. A. I. R. 1925 Nag. 228 The Court could not pass an order under this section Code in the id. Cas. 365= not apply to a 1923P. 297 ss. 404 and 2nd covers ss. Cr. L. J. 251.

First Offenders.

*[562. (1) When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the

* Section 562 was substituted by s. 157, *ibid.*

offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section

appearance before such Magistrate, who shall dispose of the case in manner provided by section 380.

*(1A) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years' imprisonment and no previous conviction is proved against him, the Court before whom he is so convicted, may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.]

(2) An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision.

(3) When an order has been made under this section in respect of any offender, the High Court may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

* Sub-section (1A) was inserted by section 4 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923).

† XLV of 1860.

(2) The provisions of sections 122, 126A, and 406A shall so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

Notes.—This section does not apply to an offender under the Stamp

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Ind. Cas. 225=28 Cr. L. J. 257=7 A. I. R. Cr. 360. An order under s. 225 Cr. L. J. 257=7 A. I. R. Cr. 360. An order upon probation of good

22 N. L. R. 166=A. I. R. jurisdiction to grant bail in a court and in which an appeal il. 49A. 247=98 Ind. Cas.

593=25 A. L. J. 97. It is incompetent to a second class Magistrate to pass orders under s. 562, Cr. Pro. Code, himself. He should submit the case to a First class Magistrate or Sub-divisional Magistrate for orders with his report if he is of opinion that the case is a fit one for the exercise of powers under that section. 25 Cr. L. J. 1124=81 Ind. Cas. 948=1923 Lab. 454. In exercising the special powers under this section the Magistrate should be guided by the public and to the offender's best interests. 75. In a case

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563. (1) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such

Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.

564. (3) The Court, before directing the release of an offender under section 562 * "sub-section 1" shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(3) Nothing in this section or in sections 562 and 563 shall affect the provisions of section 31 of the Reformatory Schools Act, 1897. †

Previously convicted Offenders.

Order for notifying
address of previously
convicted offender.

§ [565. (1) When any person having been convicted—

- (a) by a Court in British India of an offence punishable under section 215, section 489A, section 489B, section 489C, or section 489D of the Indian Penal Code, ||or of any offence punishable under Chapter XII or Chapter XVII of that Code, with imprisonment or either description for a term of three years or upwards, or
- (b) by a Court or Tribunal in the territories of any Prince or State in India acting under the general or special authority of the Governor General in Council, or of any Local Government, of any offence which would, if committed in British India, have been punishable under any of the aforesaid sections or Chapters of the Indian Penal Code|| with like imprisonment for a like term,

erted by Act 7 of 1924.

: Code of Crimin

is again convicted, of any offence punishable under any of those sections or Chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, order that such person shall be liable to imprisonment or detention for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) The Local Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

(4) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(5) Any person against whom an order has been made under this section and who refuses or neglects to comply with any rule so made shall be deemed within the meaning of section 176 of the Indian Penal Code to have omitted to give a notice required for the purpose of preventing the commission of an offence.

(6) Any person charged with a breach of any such rule may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.]

Notes.—A Magistrate is not entitled to use an order which had been set aside, as proof that the accused was an old offender, on the ground that the previous order was set aside either in appeal or revision on technical grounds. 3 Rang. 156=89, Ind. Cas. 320=26 Cr. L. J. 1344=A. I. R. 1925 Rang. 277.

SCHEDULE I.

ENACTMENTS REPEALED.

[Repealed by Act X of 1914.]

SCHEDULE I.

ENACTMENTS REPEALED.

[Repealed by Act X of 1914]

SCHEDULE

TABULAR STATEMENT

EXPLANATORY NOTE.—The entries in the second and seventh ment under the Indian Penal Code," are not intended as definition of sections of the Indian Penal Code, or even as abstracts of those sections, which is given in the first column.

The third column of this schedule applies also to the police in the

CHAPTER V.—

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto
111	Abetment of any offence, when one act is abetted and a different act is done, subject to the proviso.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.

II.

OF OFFENCES.

columns of this schedule, headed respectively "Offence" and "Punish-
the offences and punishments described in the several corresponding
but merely as references to the subject of the section, the number of
towns of Calcutta and Bombay.

ABETMENT.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the off- ence abet- ted is bail- able or not.	According as the off- ence abet- ted is com- poundable or not.	The same punishment as for the offence abetted.	The Court by which the off- ence abetted is triable.
Ditto	Ditto	Ditto	Ditto
According as the off- ence abet- ted is bail- able or not.	According as the off- ence abet- ted is com- poundable or not.	The same punishment as for the offence intended to be abetted.	The Court by which the off- ence abetted is triable.

SCHEDULE

CHAPTER V.—

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto . .	Ditto .
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto ...	Ditto ...
115	Abetment of an offence, punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...
	If an act which causes harm to be done in consequence of the abetment.	Ditto ...	Ditto ...
116	Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto ...	Ditto ...

II—*contd.*ABETMENT—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto .	Ditto	The same punishment as for the offence committed.	Ditto .
Ditto ...	Ditto ...	Ditto ...	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
According as the offence abetted is bailable or not	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment extending to to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

SCHEDULE
CHAPTER V.—

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed. If the offence be not committed ...	Ditto ... May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	Ditto ... According as a warrant or summons may issue for the offence abetted.
119	A public servant concealing a design to commit an offence which it is his duty to prevent if the offence be committed. If the offence be punishable with death or transportation for life. If the offence be not committed.	Ditto ... Ditto ... Ditto ...	Ditto ... Ditto ... Ditto ...

* Substituted by s. 159 of the Code of Criminal Procedure (Amend.

11.—*contd.*ABETMENT.—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bail- able,	Ditto ...	Imprisonment of either des- cription for 7 years and fine	Ditto.
*[Bailable]	According as the off- ence abet- ted is com- poundable or not.	Imprisonment of either des- cription for 3 years and fine.	The Court by which the of- fence abetted is triable.
According as the off- ence abet- ted is bail- able or not.	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
Not bail- able.	Ditto ...	Imprisonment of either des- cription for 10 years.	Ditto.
*[Bailable]	Ditto ..	Imprisonment extending to a quarter part of the long- est term, and of any des- cription, provided for the offence, or fine, or both.	Ditto

ment) Act, 1923 (XVIII of 1923).

SCHEDULE
CHAPTER VA.—CRI

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...
	If the offence be not committed.	Ditto ...	Ditto ...

† [CHAPTER VA.—CRI

120B	Criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two or upwards.	May arrest without warrant if arrest for the offence which is the object of the conspiracy may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence which is the object of the conspiracy.
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* Substituted by s. 159 of the Code of Criminal Procedure (Amend-
† This chapter was inserted by s. 6 and the Sch. of the

11.—*contd*MINAL CONSPIRACY.—*contd.*

5	6	7	8
Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
*[According as the offence concealed is bailable or not].	Ditto ...	Ditto ...	Ditto
*[Bailable]	Ditto ...	Imprisonment extending to one eighth part of the longest term, and of the description, provided for the offence, or fine or both	Ditto

MINAL CONSPIRACY.

According as the offence which is the object of the conspiracy is bailable or not.	Not compoundable.	The same punishment as that provided for the abetment of the offence which is the object of the conspiracy.	Court of Session when the offence which is the object of the conspiracy is triable exclusively by such Court: In the case of all other offences Court of Session, Presidency Magistrate or M of cl
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ment) Act, 1923 (XVIII of 1923).

Indian Criminal Law Amendment Act, 1913 (VIII of 1913)

SCHEDULE
CHAPTER VA.—CRI

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	Any other criminal conspiracy ...	Shall not arrest without a warrant.	Summons ...

CHAPTER VI.—OFFENCES

121	Waging or attempting to wage war, or abetting the waging of war against the Queen.	Shall not arrest without warrant.	Warrant ...
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...
122	Collecting arms, etc., with the intention of waging war against the Queen.	Ditto ...	Ditto ...
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...
124	Assaulting Governor General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...
124A	Sedition ...	Ditto ...	Ditto ...

* Substituted

† This word was substituted for the words "forfeiture of property" by XVIII of 1923)

11.—*concl'd.*MINAL CONSPIRACY.—*cont'd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable	Ditto ...	Imprisonment of either description for six months and fine or both.	Presidency Magistrate or Magistrate of the [first class].

AGAINST THE STATE.

Not bailable.	Not compoundable.	Death, or transportation for life, and *{fine}.	Court of Session.
Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years †{and fine}.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and †{fine}.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto
Ditto ...	Ditto ...	Transportation for life or for any term and fine, or	Court of Session. Chl

by Act 18 of 1923.

s. 159 of the Code of Criminal Procedure (Amendment) Act,

SCHEDULE

CHAPTER VI.—OFFEN

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
125	Waging war against any Asiatic power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...
126	Committing depredation on the territories of any power in alliance or at peace with the Queen	Ditto ...	Ditto ...
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Shall not arrest without warrant.	Warrant.
128	Public servant voluntarily allowing prisoner of State or war in his custody to escape.	Ditto ...	Ditto ...
129	Public servant negligently suffering prisoner of State or war in his custody to escape.	Ditto ...	Ditto ...

II.—*contd.*CES AGAINST THE STATE.—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
		imprisonment of either description for 3 years and fine, or fine.	Presidency Magistrate or District Magis- trate or Magis- trate of the first class spe- cially empow- ered by the Local Govern- ment in that behalf.
Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Court of Ses- sion.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 7 years and fine and forfeiture of cer- tain property.	Ditto.
Not bail- able.	Not com- poundable.	Imprisonment of either des- cription for 7 years and fine, and forfeiture of cer- tain property.	Court of Ses- sion.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Bailable.	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, P residency Ma- gistrate or Magistrate first cl

SCHEDULE

CHAPTER VI.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...

CHAPTER VII.—OFFENCES RELAT

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...
136	Harbouring such an officer, soldier or sailor, who has deserted.	Ditto ...	Ditto ...

II.—*contd.*AGAINST THE STATE.—*concl'd.*

5	9	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

ING TO THE ARMY AND NAVY.

Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine	Court of Session.
Ditto ...	Ditto ...	Death or transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session.
Bailable.	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Presidency Magistrate or Magistrate of first or class.
Ditto ...	Ditto ...	Ditto ...	Ditto

SCHEDULE

CHAPTER VIII.—OFFENCES

	1	2	3	4
		Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
137		Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons.
138		Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant.
140		Wearing the dress or carrying any token used by a soldier with intent that it may be believed that he is such a soldier.	Ditto ...	Summons.

CHAPTER VIII—OFFENCES AGAINST

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...

II - *contd*THE PUBLIC TRANQUILITY,—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Fine of 500 rupees.	Ditto ..
Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

THE PUBLIC TRANQUILITY

Bailable.	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto
Ditto ...	Ditto ...	Ditto ...	

SCHEDULE

CHAPTER VIII—OFFENCES AGAINST

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
147	Rioting	Ditto ...	Ditto ...
148	Rioting, armed with a deadly weapon.	Ditto ...	Ditto ...
149	... .. offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	May arrest without warrant.	Summons.
152	Assaulting or obstructing public servant when suppressing riot, etc.	Ditto ...	Warrant.

II.—*contd.*THE PUBLIC TRANQUILITY—*contd.*

5	9	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ..	Ditto ..	Ditto ...	Ditto
Ditto .	Ditto ...	Imprisonment of either description for 3 years, or fine, or both	Court of Session, Presidency Magistrate or Magistrate of the first class
According as the offence is bailable or not.	Ditto ...	The same as for the offence.	The Court by which the offence is triable.
Ditto ...	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto ...
Bailable	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or

CHAPTER VIII—OFFENCES AGAINST

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed. If not committed.	Ditto ...	Ditto ...
153A	Promoting enmity between classes.	Ditto ...	Summons.
154	Owner or occupier of land not giving information of riot, etc.	Shall not arrest without warrant.	Warrant.
		Ditto ...	Summons.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...
158	being hired to take part in an unlawful assembly or not.	May arrest without warrant.	Ditto ...

II.—*contd.*THE PUBLIC TRANQUILITY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code	By what Court triable.
			of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 2 years, or fine, or both	Presidency Magistrate or Magistrate of the first class.
Bailable.	Ditto ...	Fine of 1,000 rupees.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Fine	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE

CHAPTER VIII.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	* Or in go armed. *	Ditto ...	Warrant.
160	Committing affray.	Shall not arrest without warrant.	Summons.

CHAPTER IX.—OFFENCES BY OR

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ...	Ditto ...
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...
164	Abetment by public servant of the offence defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...

* The figure "159" has been

11.—*contd.*AGAINST THE PUBLIC TRANQUILITY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine or both	Ditto ...
Bailable.	Not compoundable.	Imprisonment of either description for one month, or fine of 100 rupees, or both.	Any Magistrate.

RELATING TO PUBLIC SERVANTS.

Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	... ..	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE

CHAPTER IX—OFFENCES BY OR

1	2	3	4
	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	Ditto
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto	Ditto
167	Public servant framing an incorrect document with intent to cause injury.	Ditto	Ditto
168	Public servant unlawfully engaging in trade.	Shall not arrest without warrant.	Summons.
169	Public servant unlawfully buying or bidding for property.	Ditto	Ditto
170	Personating a public servant.	May arrest without warrant.	Warrant.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto	Summons.

II—*contd*RELATING TO PUBLIC SERVANTS—*contd*

5	6	7	8
Whether bailable or not,	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ..	Simple Imprisonment for 1 year, or fine, or both.	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Bailable.	Ditto	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first Class.
Ditto ...	Ditto ...	Simple Imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto

[CHAPTER IXA.—OFFENCES

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.
171E	Bribery ...	Shall not arrest without warrant.	Summons.
171F	Undue influence and personation at an election, ..	Ditto ...	Ditto ...
171G	False statement in connection with an election.	Ditto ...	Ditto ...
171H	Illegal payments in connection with elections.	Ditto ...	Ditto ...
171I	Failure to keep election accounts.	Ditto ...	Ditto ...

CHAPTER X—CONTEMPTS OF THE LAWFUL

172	Abstending to avoid service of summons or other proceedings from a public servant. If summons or notice require attendance in person, etc., in a Court of Justice.	Shall not arrest without warrant. Ditto ...	Summons. Ditto ...
17	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation If summons, etc., require attendance in person, etc., in a Court of Justice	Shall not arrest without warrant. Ditto ...	Summons. Ditto ...

* These entries were added by s. 3 of the Indian Elections Offences

11.—*contd.*

RELATING TO ELECTIONS

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable
Bailable.	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both or if treating only, fine only.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both	Ditto.
Ditto ...	Ditto ...	Fine ...	Ditto.
Ditto ...	Ditto ...	Fine of 500 rupees.	Ditto.
Ditto ...	Ditto ...	Fine of 500 rupees.	Ditto.]

AUTHORITY OF PUBLIC SERVANTS.

Bailable.	Not compoundable	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees or both	Ditto.
Bailable. . .	Not compoundable	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both	Ditto

and Inquiries Act, 1920 (XXXIX of 1920).

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...
	If the order require personal attendance, etc., in a Court of Justice	Ditto ...	Ditto ...
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Shall not arrest without warrant	Summons
	If the document is required to be produced in or delivered to a Court of Justice.	Ditto ...	Ditto ...
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information	Ditto ...	Ditto ...
	If the notice or information required respects the commission of an offence, etc.	Ditto ...	Ditto ...

II.—*contd*AUTHORITY OF PUBLIC SERVANTS—*contd*

5	6	7	8
Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ..	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both	Any Magistrate.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto
Bailable.	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

CHAPTER X—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...
	If the information required respects the commission of an offence, etc.	Ditto ...	Ditto ...
178	Refusing oath when duly required to take oath by a public servant.	Ditto ...	Ditto ...
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant.
182	Giving false information to a public servant in order to cause	Ditto ...	Summons.

. 1.—*contd.*AUTHORITY OF PUBLIC SERVANTS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ..	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto. ...	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or	Presid-

SCHEDULE

CHAPTER X—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	him to use his lawful power to the injury or annoyance of any person.		
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...
185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Shall not arrest without warrant.	Summons.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...
	Wilfully neglecting to aid a public servant who demands aid in the executing of process, the prevention of offences, etc.	Ditto ...	Ditto ...
188	Disobedience to an order lawfully promulgated by a public servant if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...

11.—*contd.*AUTHORITY OF PUBLIC SERVANTS—*contd.*

5	6	7	8
Whether bailable or not	Whether compoundable or not	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	fine of 1,000 rupees, or both. Ditto ...	Magistrate of the first or second class. Ditto.
Ditto ..	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
Bailable.	Not compoundable.	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
Ditto ..	Ditto ...	Simple Imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If such disobedience causes danger to human life, health or safety, etc.	Ditto ...	Ditto ...
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...
193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...
195	Giving or fabricating false evidence with intent to procure con-	Ditto ...	Ditto ...

* The words "Not bailable" were substituted for the word "Bailable" 1903 (1 of 1903).

II — *concl'd.*AUTHORITY OF PUBLIC SERVANTS — *cont'd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ..	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
Bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto.
Not bailable.	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Death, or as above.	Ditto.
*[Not bailable.]	Ditto ...	The same as for the offence.	Ditto.

by Part II of the Second Schedule to the Repealing and Amen

SCHEDULE

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	<p>viction of an offence punishable with transportation for life or with imprisonment for 7 years or upwards.</p>		
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto	Ditto
197	Knowingly issuing or signing a false certificate, relating to any fact of which such certificate is by law admissible in evidence.	Ditto	Ditto
198	Using as a true certificate one known to be false in a material point.	Ditto	Ditto
199	False statement made in any declaration which is by law receivable as evidence.	Ditto	Ditto
200	Using as true any such declaration known to be false.	Ditto	Ditto
201	<p>.....</p> <p>offence.</p>	Ditto	Ditto

11.—*contd.*AUTHORITY OF PUBLIC SERVANTS.—*concl'd*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
According as the off- ence of giving such evi- dence is bailable or not. Bailable.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Ditto ...	Ditto ...	The same as for giving false evidence.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto
Ditto ...	Ditto ...	Ditto ...	Ditto
Ditto ...	Not com- poundable.	Ditto ...	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine	Court of Ses- sion.

SCHEDULE

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If punishable with transportation for life or imprisonment for 10 years.	Ditto ...	Ditto ...
	If punishable with less than 10 years imprisonment.	Ditto ...	Ditto ...
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons
203	Giving false information respecting an offence committed.	Ditto ...	Warrant
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...

11.—*contd.*AUTHORITY OF PUBLIC SERVANTS—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the off- ence is triable.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or se- cond class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 years, or fine, or both	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.

SCHEDULE

CHAPTER X.— CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
206	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture or in satisfaction of a fine under sentence, or in execution of a decree.	Shall not arrest without warrant.	Warrant ...
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...
209	False claim in a Court of Justice.	Ditto ...	Ditto ...
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	Ditto ...
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...
	If offence charged be punishable with imprisonment for 7 years or upwards.	Ditto ...	Ditto ...

II.—*contd.*AUTHORITY OF PUBLIC SERVANTS.—*contd*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code	By what Court triable,
Ditto	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class or second class.
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto ...
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto ...
Ditto ...	Ditto ...	Ditto ...	Ditto ...
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of session, Presidency.

SCHEDULE

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If offence charged be capital, or punishable with transportation for life.	Ditto	Ditto
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto
	If punishable with imprisonment for 1 year and not for 10 years	May arrest without warrant.	warrant.
213	Taking gift, etc., to screen an offender from punishment, if the offence be capital.	May arrest without warrant.	Ditto
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	Ditto

* These words were substituted by s. 159 of the Code of Criminal

11.—*contd.*AUTHORITY OF PUBLIC SERVANTS.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto	Ditto ...	Ditto ...	Magistrate or Magistrate of the first class.
Ditto	Ditto ...	Imprisonment of either description for 5 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Bailable.	Not compoundable	Imprisonment for a quarter of the longest term, and of the description, provided for the offence or fine or both.	Ditto.
Ditto ...	Ditto ..	Imprisonment of either description for 7 years, and fine.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session.
			Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER X.—CONTEMPT OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
213	If with imprisonment for less than 10 years,	Ditto	Ditto
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	*[Shall not arrest without warrant.]	Ditto
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	Ditto
	If with imprisonment for less than 10 years.	Ditto	Ditto
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	*[May arrest without warrant]	Ditto

* These words were substituted by s. 159 of the Code of Criminal

II.—*contd.*AUTHORITY OF PUBLIC SERVANTS.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the off- ence is triable
Ditto ..	Ditto ...	Imprisonment of either des- cription for 7 years, and fine.	Court of Ses- sion.
Ditto ...	Ditto ..	Imprisonment of either des- cription for 3 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provid- ed for the offence, or fine or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the off- ence is triable.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first clas

SCHEDULE

CHAPTER X. — CONTEMPT OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	Ditto	Ditto
	If punishable with transportation for life, or with imprisonment for 10 years.	May arrest without warrant.	Warrant
	If with imprisonment for 1 year, and not for 10 years.	Ditto	Ditto
216A.	Harbouring robbers or dacoits	Ditto	Ditto
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant	Summons

II.—*contd.*AUTHORITY OF PUBLIC SERVANTS—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code	By what Court triable,
Ditto ...	Ditto ...	Imprisonment of either des- cription for 7 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Bailable ..	Not com- pound- able.	Imprisonment of either des- cription for 3 years, with or without fine.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
Ditto .	Ditto ...	Rigorous imprisonment for 7 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 2 years, or fine, or both	Presidency Magistrate or Magistrate of the first or sec- ond class ;

SCHEDULE

CHAPTER X.—CONTEMPT OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto ...	Ditto ...
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...
221	Intentional omission to apprehend	Ditto ...	Ditto ...
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...
	If with imprisonment for less than 10 years.	Shall no arrest without warrant.	Warrant.
222	Intentional omission to apprehend on the part of a public servant	Ditto ...	Ditto ...

II.—*contd.*AUTHORITY OF PUBLIC SERVANTS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto ...
Ditto ..	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ..	Imprisonment of either description for 7 years, with or without fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Bailable.	Not compoundable.	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either	Court of Session.

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
	bound by law to apprehend person under sentence of a Court of Justice if under sentence of death. If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 20 years or upwards	Ditto ...	Ditto
	If under sentence of imprisonment for less than 10 years or lawfully committed to custody	Ditto ...	Ditto
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto

.1—*contd*AUTHORITY OF PUBLIC SERVANTS—*contd*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
		description for 14 years, with or without fine.	
Ditto ..	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto
Bailable	Ditto ...	Imprisonment of either des- cription for 3 years, or fine, or both	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class
Ditto	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto
Not bail- able.	Ditto ...	Imprisonment of either des- cription for 3 years, and fine.	Court of sion, dency

CHAPTER X.—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
225A	If charged with a capital offence.	Ditto ...	Ditto ...
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...
	If under sentence of death.	Ditto ...	Ditto ...
	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for— (a) in cases of intentional omission or sufferance.	Shall not arrest without warrant.	Ditto ...
	(b) In case of negligent omission or sufferance.	Ditto ...	Summons.

11.—*contd.*AUTHORITY OF PUBLIC SERVANTS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ..	Ditto ...	Imprisonment of either description for 7 years, and fine	Magistrate of the first class, Court of Session.
Ditto ...	Not compoundable.	Ditto	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Bailable.	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of first or 2 class.

SCHEDULE

CHAPTER X—CONTEMPTS OF THE LAWFUL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
225B	Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.	May arrest without warrant.	Warrant.
226	Unlawful return from transportation.	Ditto ...	Ditto ...
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...
229	Personation of a juror or assessor.	Ditto ...	Ditto ...

CHAPTER XII.—OFFENCES RELATING TO COIN

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant.
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II.—*contd.*AUTHORITY OF PUBLIC SERVANTS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto. ...	Ditto ...	Imprisonment of either description for 6 months, or fine or both.	Ditto.
Not bailable.	Ditto ...	Transportation for life, and fine, and rigorous imprisonment for 3 years before transportation.	Court of Session.
Ditto ...	Ditto ...	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
Bailable.	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed subject to the provisions of Chapter XXXV.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

AND GOVERNMENT STAMPS.

Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session.
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CHAPTER XII.—OFFENCES RELATING TO COIN

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance
232	Counterfeiting or performing any part of the process of counterfeiting the Queen's coin.	Ditto ...	Ditto ...
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...
234	Making buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin	Ditto ...	Ditto ...
	If Queen's coin.	Ditto ...	Ditto ...
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...
237	Import or export of counterfeit coin knowing the same to be counterfeit.	Ditto ...	Ditto ...

11.—*contd*AND GOVERNMENT STAMPS—*contd.*

5	9	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable,
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Ses- sion.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 10 years, and fine.	Court of Ses- sion.
Ditto ...	Ditto ...	The punishment provided for abetting the counter- feiting of such coin within British India.	Ditto
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Ma- gistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN

1	2	3	4
Section	Offence.	Whether the police, may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...
239	Having any counterfeit coin known to be such when it came into possession, and delivering, etc., the same to any person.	Ditto ...	Ditto ...
240	The same with respect to the Queen's coin.	May arrest without warrant.	Warrant.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof	Ditto ...	Ditto ...
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...

II.—*contd.*AND GOVERNMENT STAMPS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Ses- sion.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 5 years, and fine.	Court of Ses- sion, Presiden- cy Magistrate or Magistrate of the first class.
Not bail- able.	Not com- poundable.	Imprisonment of either des- cription for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for a years, or fine, of ten times the value of the coin counterfeited, or both	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Ditto .	Imprisonment of either description for 3 years and fine.	Court of Ses- sion, Presiden- cy Magistrate or Magistrate of the first class
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.

SCHEDULE

CHAPTER XII—OFFENCES RELATING TO COIN

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto .
245	Unlawfully taking from Mint any coining instrument.	Ditto ...	Ditto ...
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto
247	Fraudulently ...	Ditto ...	Ditto .
248	... with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto "
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description	Ditto ...	Ditto "
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto "
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	May arrest without warrant.	Warrant.

I.—*contd.*AND GOVERNMENT STAMPS—*contd.*

5	6	7	8
Whether bailable or not	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Ditto ...	Court of Ses- sion.
Ditto —	Ditto ...	Ditto. ..	Ditto
Ditto ..	Ditto ...	Imprisonment of either des- cription for 3 years and fine	Court of Ses- sion, Presi- dency Magis- trate or Ma- gistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 7 years and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto
Ditto ...	Ditto ...	Imprisonment of either des- cription for 7 years, and fine.	Ditto
Ditto ...	Ditto ...	Imprisonment of either des- cription for 5 years, and fine.	Ditto.
Not bail- able.	Not com- poundable.	Imprisonment of either des- cription for 10 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.

CHAPTER XII—OFFENCES RELATING TO COIN

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered	Ditto ...	Ditto ...
255	Counterfeiting a Government stamp.	Ditto ...	Ditto ...
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp	Ditto ...	Ditto ...
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...

II.—*contd.*AND GOVERNMENT STAMPS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ..	Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto.
Ditto ...	Ditto .	Imprisonment of either description for 5 years, and fine.	Ditto
Ditto ...	Ditto .	Imprisonment of either description for 2 years, or fine of ten times the value of the coin	Presidency Magistrate or Magistrate of the first or second class.
Bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Court of session, Presidency M

SCHEDULE

CHAPTER XII—OFFENCES RELATING TO COIN

1	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto ...	Ditto ...
262	Using a Government stamp known to have been before used.	May arrest without warrant.	Warrant ...
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...
263A	Fictitious stamps ...	Ditto ...	Ditto ...

11—*contd.*AND GOVERNMENT STAMPS—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ..	Imprisonment of either des- cription for 7 years, or fine, or both.	or Magistrate of the first class. Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 years, or fine, or both.	Ditto.
Bailable ...	Not com- poundable.	Imprisonment of either des- cription for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first and second class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 years, or fine, or both.	Court of Ses- sion, Presiden- cy Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Fine of 200 rupees ...	Presidency Magistrate or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RE

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether warrant summons ordinarily in the first instance.
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons
265	Fraudulent use of false weight or measure.	Ditto	Ditto
266	Being in possession of false weights or measures for fraudulent use.	Ditto	Ditto
267	Making or selling false weights or measures for fraudulent use.	Ditto	Ditto

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto	Ditto
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto

II—*contd.*

TING TO WEIGHTS AND MEASURES.

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either des- cription for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

TH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

Bailable ...	Not com- poundable.	Imprisonment of either des- cription for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 2 years, or fine, or both.	Ditto.
Ditto ..	Ditto ...	Imprisonment of either des- cription for 6 months, or fine, or both.	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH.

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...
273	Selling any food or drink as food or drink, knowing the same to be noxious.	Ditto ...	Ditto ...
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Shall not arrest without warrant.	Summons.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...
276	.....	Ditto ...	Ditto ...
277	..... spring or reservoir.	May arrest without warrant.	Ditto ...
278	Making atmosphere noxious to health	Shall not arrest without warrant.	Ditto ...
279	Driving or riding on a public way so rashly or negligently as to endanger human life, etc.	May arrest without warrant.	Ditto ...

II.—*concl.*TH, SAFETY, CONVENIENCE, DECENCY AND MORALS—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not	Punishment under the Indian Penal Code,	By what Court triable.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Bailable.	Not com- poundable.	Imprisonment of either des- cription for 6 months, or fine of 1,000 rupees, or both.	Presidency. Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto. ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Fine of 500 rupees.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 6 months, or fine, of 1,000 rupees, or both.	Ditto.

SCHEDULE

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH

1.	2.	3.	4.
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	Ditto ...	Ditto ...
281	Exhibition of a false light, mark or buoy.	Ditto ...	Warrant
282	Conveying for hire any person, by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto ...	Ditto ...
284	Dealing with any poisonous substance so as to endanger human life, etc.	Shall not arrest without warrant.	Summons.
285	Dealing with fire or any combustible matter so as to endanger human life, etc.	May arrest without warrant.	Ditto ...
286	So dealing with any explosive substance.	Ditto ...	Ditto ...
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto ...

1.—*contd*H. SAFETY, CONVENIENCE, DECENCY AND MORALS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session
Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Fine of 200 rupees.	Ditto.
Bailable.	Not compoundable	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto	Any Magistrate.
Ditto ...	Ditto ...	Ditto	Ditto.
Ditto ...	Ditto .	Ditto	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether warrant summons ordinarily in the instao
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto ...	Ditto
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant	Ditto
290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto
292	Sale, etc., of obscene books, etc.	Ditto ...	Warrant
293	"Sale, etc., of obscene objects to young persons."*	Ditto ...	Ditto
294	Obscene songs.	Ditto ...	Ditto

* These words within quotations have been substituted

† Substituted by s. 159 of the Code of Criminal

II,—*contd.*TH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto .	Ditto ...	Ditto ...	Any Magistrate.
Ditto ...	Ditto ...	Fine of 200 rupees.	Ditto.
Ditto ...	Ditto ...	Simple Imprisonment for 6 months, or fine, or both	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine or both.	"Presidency Magistrate or Magistrate of the first class."*
Ditto ...	Ditto ...	"Imprisonment of either description for 6 months, or fine or both."*	Ditto.
Ditto ...	Ditto ...	Ditto ...	{Any Magistrate. }

tuted by Act 8 of 1925.

Procedure (Amendment) Act, 1924 (XVIII of 1924)

SCHEDULE

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
294A	Keeping a lottery office.	Shall not arrest without warrant.	Summons ...
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...

CHAPTER XV.—OFFENCES

295	Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant	Summons ...
295A	Maliciously insulting the religion or the religious beliefs of any class.	Shall not arrest without warrant.	warrant ...
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	Summons ...
297	Trespassing in place of worship or sepulture, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...

II.—*contd.*TH, SAFETY, CONVENIENCE DECENCY, AND MORALS—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Not com- poundable.	Imprisonment of either des- cription for 6 months, or fine or both.	Ditto.
Ditto ...	Ditto ...	Fine of 1,000 rupees.	Ditto.

RELATING TO RELIGION.

Bailable.	Not com- poundable.	Imprisonment of either des- cription for 2 years, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Not bail- able.	Ditto ...	Ditto ...	Court of Ses- sion, or Presi- dency Magis- trate.
Bailable ...	Not com- poundable.	Imprisonment of either des- cription for 1 year, or fine, or both	Presidency Magistrate or Magistrate of the first or se- cond class.
Ditto ...	Ditto ...	Ditto ...	Ditto ...

CHAPTER XV.—OFFENCES REL

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
298	Uttering any word or making any sound to the hearing, or making any gesture or placing any object in the sight of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto

CHAPTER XVI.—OFFENCES
Of Offences

302	Murder	May arrest without warrant.	Warrant.
303	Murder by a person under sentence of imprisonment for life.	Ditto	Ditto
304	...	Ditto	Ditto
	intention of causing death, etc. If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc.	Ditto	Ditto
304A	Causing death by rash or negligent act.	Ditto	Ditto

II.—*contd.*TING TO RELIGION.—*concl'd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Compoundable.	Ditto ...	Ditto

AFFECTING THE HUMAN BODY.

affecting Life

Not bailable.	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
Ditto ...	Ditto ...	Death ...	Ditto
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
Bailable	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Mag. of the first class.

CHAPTER XVI.—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
305	Abetment of suicide committed by a child, or insane or delirious person or an idiot, or a person, intoxicated.	Ditto ...	Ditto ...
306	Abetting the commission of suicide.	Ditto ...	Ditto ...
307	Attempt to murder ...	Ditto ...	Ditto ...
..	If such act, cause hurt to any person.	Ditto ...	Ditto ...
"	Attempt by life-convict to murder, if hurt is caused.	Ditto ...	Ditto ...
308	Attempt to commit culpable homicide.	Ditto ...	Ditto ...
"	If such act cause hurt to any person.	Ditto ...	Ditto ...
309	Attempt to commit suicide ...	Ditto ...	Ditto ...
310	Belag u thog ...	Ditto ...	Ditto ...

11.—*contd.*THE HUMAN BODY.—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bail- able.	Ditto ...	Death, or transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
Ditto ..	Ditto ...	Imprisonment of either des- cription for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
Ditto ...	Ditto ...	Death, or as above	Ditto.
Bailable ...	Ditto ...	Imprisonment of either des- cription for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 7 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Not bail- able.	Ditto ...	Transportation for life, and fine.	Court of sloo.

SCHEDULE

CHAPTER XVI.—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
<i>Of the Causing of Miscarriage ; of Injuries to Unborn Children ; of the</i>			
312	Causing miscarriage.	Shall not arrest without warrant.	Warrant.
	If the woman be quick with child.	Shall not arrest without warrant.	Warrant.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...
	If act done without woman's consent.	Ditto ...	Ditto ...
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	Ditto ...
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...
317	Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...

* This entry was substituted by s. 159 of the Code of Criminal

11.—*contd*THE HUMAN BODY.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code	By what Court triable.
<i>Exposure of Infants, and of the Concealment of Births.</i>			
Bailable.	Not com- poundable	Imprisonment of either des- cription for 3 years, or fine, or both	Court of Ses- sion.
Ditto	Ditto ...	Imprisonment of either des- cription for 7 years, and fine	Court of Ses- sion.
Not Bailable	Ditto ...	Transportation for life or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 10 years, and fine	Ditto
Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
Ditto ..	Ditto ...	Imprisonment of either des- cription for 10 years, or, fine, or both.	Ditto.
Ditto ...	Ditto ..	Imprisonment of either des- cription for 10 years, or fine, or both.	Ditto.
Bailable.	Ditto ...	Imprisonment of either des- cription for 7 years, or fine, or both.	*Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.

Procedure (Amendment) Act, 1923 (XVIII of 1923).

Cr. Pro. Code.—31

SCHEDULE

CHAPTER XVI.—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
318	Concealment of birth by secret disposal of dead body.	Ditto	Ditto
323	Voluntarily causing hurt.	Shall not arrest without warrant.	Summons
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto
325	Voluntarily causing grievous hurt.	Ditto	Ditto
326	Voluntarily causing grievous hurt by dangerous weapons or means.	May arrest without warrant.	Summons.

* The words "or second"

II.—*contd.*THE HUMAN BODY—*contd.*

5	9	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Hurt

Bailable.	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

were omitted by *ibid.*

CHAPTER XVI—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
327	Voluntarily causing hurt to extort property or a valuable security or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto ...	Warrant.
328	Administering stupefying drug with intent to cause hurt, etc	Ditto ...	Ditto ...
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto ...	Ditto ...
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Ditto ...	Ditto ...
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc.	Ditto ...	Ditto ...
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...

*Substituted by s. 159 of the Code of Criminal Procedure

11.—*contd.*THE HUMAN BODY—*contd.*

5	6	7	8
Whether ballable or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	*[Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto	*[Court of Session.
Ditto .	Ditto ...	Transportation for life, or imprisonment, of either description for 10 years, and fine.	Ditto.
Ballable.	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
Not ballable	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
Ballable.	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first
Not ballable.	Ditto ...	Imprisonment of either description for 10 years and fine	Court of session.

(Amendment) Act, 1923 (XVIII of 1923).

CHAPTER XVI—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant	Summons
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Ditto
336	Doing any act which endangers human life or the personal safety of others.	Ditto	Ditto
337	Causing hurt by an act which endangers human life, etc.	Ditto	Ditto

.1.—*contd.*THE HUMAN BODY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2,000 rupees or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees or both.	Any Magistrate.
Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVI—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
338.	Causing grievous hurt by an act which endangers human life, etc.	Ditto ...	Ditto ...
<i>Of Wrongful Restraint and</i>			
341.	Wrongfully restraining any person.	May arrest without warrant.	Summons ...
342.	Wrongfully confining any person.	Ditto ...	Ditto ...
343.	Wrongfully confining for three or more days.	Ditto ...	Ditto ...
344.	Wrongfully confining for 10 or more days.	Ditto ...	Ditto ...

* Substituted by s. 159 of the Code of Criminal Procedure (Amend-

11.—*contd.*THE HUMAN BODY—*contd*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable
Ditto	Ditto ..	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

Wrongful Confinement

Bailable ...	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ..	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	*[Compoundable when permission is given by the Court before which the prosecution is pending]	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Ditto ...	*[Not compoundable.]	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency M

ment) Act, 1923 (XVIII of 1923).

CHAPTER XVI—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Summons ...
346	Wrongful confinement in secret.	May arrest without warrant.	Ditto ...
347	Wrongful confinement for the purpose of extorting property or constraining to an illegal act, etc	Ditto ...	Ditto ...
348	Wrongful confinement for the purpose of extorting confession or	Ditto ...	Ditto ...

* Substituted by s. 159 of the Code of Criminal Procedure (Amend-

II.—*contd*THE HUMAN BODY.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable	Not compoundable	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Magistrate or Magistrate of the first or second class.
Ditto	*[Compoundable when permission is given by the Court before which the prosecution is pending.]	Ditto	Ditto.
Not compoundable.	Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session, P

CHAPTER XVI.—OFFENCES AFFECTING

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	Information, or of compelling restoration of property, etc.		

Of Criminal Force

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons "
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant. "
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto "	Ditto "
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons "
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person	May arrest without warrant.	Warrant.

II.—*contd.*THE HUMAN BODY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
			Magistrate or Magistrate of the first class.

and Assault.

Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both	Any Magistrate.
Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Compoundable.	Ditto ...	Ditto
Not bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

SCHEDULE

CHAPTER XVI.—OFFENCES AFFECTING

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	Information, or of compelling restoration of property, etc.		

Of Criminal Force

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons "
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant. "
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	Ditto "
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons "
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant.

II.—*contd.*THE HUMAN BODY—*contd*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
			dency, Magistrate or Magistrate of the first class.

and Assault.

Ballable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both	Any Magistrate.
Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Compoundable.	Ditto ...	Ditto
Not bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

SCHEDULE

CHAPTER XVI.—OFFENCES AFFECTING

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	Information, or of compelling restoration of property, etc.		

Of Criminal Force

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons "
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant. "
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto	Ditto "
355	Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons "
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant.

II—*contd.*THE HUMAN BODY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
			dency, Magistrate or Magistrate of the first class.

and Assault.

Ballable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both	Any Magistrate.
Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Compoundable.	Ditto ...	Ditto
Not bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

CHAPTER XVI—OFFENCES AFFECTING

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...

Of Kidnapping, Abduction, Slavery

363	Kidnapping.	May arrest without warrant.	Warrant ...
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...

11.—*contd*THE HUMAN BODY—*contd*

5	6	7	8
Whether bailable or not	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	* [Compoundable when permission is given by the Court before which the prosecution is pending]	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or or both.	Ditto
Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto ...

and Forced Labour.

*[Bailable]	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Sessions, Presidency Magistrate or Magistrate of the first class.
Not bailable.	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of session.

(Amendment) Act, 1923 (XVIII of 1923).

CHAPTER XVI—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto	Ditto
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	Ditto	Ditto
366A	Procurement of minor girl	Ditto	Ditto
366B	Importation of girl from foreign country	Ditto	Ditto
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Ditto	Ditto
368	Concealing or keeping in confinement a kidnapped person.	May arrest without warrant.	Warrant.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto	Ditto
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto

* Substituted by s. 159 of the Code of Criminal Procedure

11.—*contd*THE HUMAN BODY.—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto
Ditto ...	Ditto ...	Ditto ...	Ditto.
Not bail- able.	Not com- poundable.	Punishment for kidnapping or abduction.	[Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
Bailable,	Ditto ...	Ditto ...	Court of Session.

(Amendment) Act, 1923 (XVIII of 1923).

Cr. Pro. Code.—32

CHAPTER XVI.—OFFENCES AFFECTING

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
371	Habitual dealing in slaves.	May arrest without warrant.	Ditto ...
372	Selling or letting to hire a minor for purposes of prostitution, etc.	Ditto ...	Ditto ...
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...
374	Unlawful compulsory labour.	*[Shall not arrest without warrant,]	Ditto ...
of			
*376	Rape— If the sexual intercourse was by a man with his own wife not being under 12 years of age.	Shall not arrest without warrant.	Summons ...
	If the sexual intercourse was by a man with his own wife being under 12 years of age.	Ditto ...	Ditto ...

11.—*contd.*THE HUMAN BODY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Bailable.	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

Rape.

5	6	7	8
Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Chief Presidency Magistrate or District Magistrate.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Sessions.

CHAPTER XVI.—OFFENCES AFFECTING

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.
	In any other case...	May arrest without warrant.	Warrant
<i>Of Unnatural</i>			
377	Unnatural offences ...	Ditto ...	Ditto ...

CHAPTER XVII.—OFFENCES

379	Theft ...	May arrest without warrant.	Warrant ...
380	Theft in a building, tent or vessel	Ditto ...	Ditto ...
381	Theft by clerk or servant of property in possession of master or employer.	Ditto ...	Ditto ...

11—*contd.*THE HUMAN BODY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Ditto ...	Ditto ...	Ditto ...

Offences.

Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
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AGAINST PROPERTY.

Theft.

Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate

II.—*contd*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Regorous imprisonment for 10 years, and fine.	first or second class Court of Session, Presidency Magistrate or Magistrate of the first class.
<i>Portion</i>			
Bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.

CHAPTER XVII.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to	Ditto	Ditto
384	Extortion	Shall not arrest without warrant	Warrant
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto	Ditto
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto	Ditto
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Ditto	Ditto

II.—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether ballable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Regorous imprisonment for 10 years, and fine.	first or second class. Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
<i>Section</i>			
Ballable.	Not com- poundable.	Imprisonment of either des- cription for 3 years, or fine, or both.	Court of Ses- sion, Presi- dency Magis- trate or Ma- gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 2 years, or fine, or both.	Ditto.
Not ball- able.	Ditto ...	Imprisonment of either des- cription for 10 years and fine.	Court of Ses- sion.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 7 years, and fine...	Ditto.

CHAPTER XVII—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant, or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Shall not arrest without warrant.	Warrant.
	If the offence threatened be an unnatural offence.	Ditto	Ditto
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto	Ditto
	If the offence be an unnatural offence.	Ditto	Ditto
Of Robbery			Of Robbery
392	Robbery	May arrest without warrant.	Warrant
	If committed on the high way between sunset and sunrise.	Ditto	Ditto
393	Attempt to commit robbery	Ditto	Ditto

11.—*Contd.*AGAINST PROPERTY.—*Contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable
Bailable.	Not compoundable.	Imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life ...	Ditto. 20
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine	Ditto.
Ditto ...	Ditto ...	Transportation for life	Ditto. 20
Not bailable.	Not compoundable.	Rigorous imprisonment for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Rigorous imprisonment for 14 years, and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years, and fine.	Ditto

SCHEDULE

CHAPTER XVII.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto	Ditto
395	Dacoity	Ditto	Ditto
396	Murder in dacoity.	Ditto	Ditto
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto	Ditto
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto	Ditto
399	Making preparation to commit dacoity.	Ditto	Ditto
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto	Ditto
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto	Ditto

11.—*contd.*AGAINST PROPERTY.—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Court of Ses- sion.
Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprison- ment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Rigorous imprisonment for 7 years, and fine.	Court of Ses- sion, Presi- dency Magistrate or Magistrate of first class.

11.—*contd.*AGAINST PROPERTY.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Ditto ...	Court of Session.
Bailable.	[Compoundable when permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate
Bailable.	Not compoundable.	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.

(Amendment) Act, 1923 (XVIII of 1923).

Procedure (Amendment) Act, 1923 (XVIII of 1923).

SCHEDULE

CHAPTER XVII.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant, or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.

Of Criminal

406	Criminal breach of trust.	May arrest without warrant.	Ditto
407	Criminal breach of trust by a carrier, wharfinger, etc.	Ditto	Ditto
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto
409	Criminal breach of trust by public servant or by banker, merchant or agent, etc.	Ditto	Ditto

11.—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code,	By what Court triable.

Breach of Trust.

Not bail- able.	Ditto ...	Imprisonment of either des- cription for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Ses- sion, Presiden- cy Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Court of Ses- sion, Presiden- cy Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Ses- sion, Presi- dency Mag- istrate or M- strate of first class.

CHAPTER XIV.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.

Of the Receiving

411	Dishonestly receiving stolen property knowing it to be stolen.	May arrest without warrant.	Warrant
412	Dishonestly receiving stolen property knowing that it was obtained by dacoity.	Ditto	Ditto
413	Habitually dealing in stolen property.	Ditto	Ditto
414	Assisting in concealment or disposal of stolen property knowing it to be stolen.	Ditto	Ditto

11.—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.

of Stolen Property.

Not bail- able	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Ses- sion, Presi- dency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Ses- sion.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of first or se- cond class.

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.

Of Ch

417	Cheating	Shall not arrest without warrant.	Ditto
418	Cheating a person whose interest the offender was bound, either by law or by legal contract to protect.	Ditto	Ditto
419	Cheating by personation	May arrest without warrant.	Ditto
420	Cheating and thereby dishonestly inducing delivery of property or making alteration or destruction of a valuable security.	Ditto	Ditto

* Substituted by s. 159 of the Code of Criminal Procedure

II.—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
<i>ending.</i>			
Bailable.	* [Compoundable when permission is given by the Court before which the prosecution is pending.]	Imprisonment of either description for 1 year, or fine or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto. ...	*Ditto ...	Ditto ...	Ditto.
Ditto ...	*Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magis-

CHAPTER XVII—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.

of CA

417	Cheating	Shall not arrest without warrant.	Ditto
418	Cheating a person whose interest the offender was bound, either by law or by legal contract to protect.	Ditto	Ditto
419	Cheating by personation ...	May arrest without warrant.	Ditto
420	Cheating and thereby dishonestly inducing delivery of property or making alteration or destruction of a valuable security.	Ditto	Ditto

* Substituted by s. 159 of the Code of Criminal Procedure

II.—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether ballable or not.	Whether com-poundable or not.	Pnnishment under the Indian Penal Code.	By what Court triable.

eating.

Ballable.	* [Com-poundable when per-mission is given by the Court before which the prosecution is pendlog.]	Imprisonment of either description for 1 year, or fine or both.	Presidency Ma-gistrate or Ma-gistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either des-cription for 3 years, or fine, or both.	Court of Ses-sion, Presi-dency Magis-trate or Magis-trate of the first or second class.
Ditto. ...	*Ditto ...	Ditto ...	Ditto.
Ditto ...	*Ditto ...	Imprisonment of either des-cription for 7 years, and fine.	Court of Ses-sion, Presi-dency

Amendment) Act, 1923 (XVIII of 1923).

SCHEDULE

CHAPTER XVII.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
		<i>Of Fraudulent Deeds and</i>	
421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto	Ditto
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto	Ditto
424	Fraudulent removal or concealment of property, of himself, or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto	Ditto

II.—*contd.*AGAINST PROPERTY.—*contd.*

5	6	7	8
Whether ballable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
			trate or Magistrate of the first class.

Disposition of Property.

Ballable.	Not Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XVII.—OFFENCE

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
			<i>Of Mischief</i>
426	Mischief ...	Ditto ...	Summons.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May... arrest without warrant.	Ditto ...
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...

II.—*contd.*AGAINST PROPERTY.—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
<i>chief.</i>			
Ditto ...	Compound- able when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either des- cription for 3 months, or fine, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 12 years, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
Ditto ...	Not com- poundable.	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Ses- sion, Preside- ncy Magistrate or Magistrate of the first or second class.

SCHEDULE

CHAPTER XVII—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
430	Mischief by causing discolouration of supply of water for agricultural purposes, etc.	Ditto	Ditto
431	Mischief by injury to public road, bridge, navigable river, or navigable channel and rendering it impassable or less safe for travelling or conveying property.	Ditto	Ditto
432	Mischief by causing foundation or obstruction to public drainage, attended with damage.	Ditto	Ditto
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto	Ditto
434	Mischief by destroying or moving, etc., a land-mark fixed by public authority.	Shall not arrest without warrant.	Ditto

II.—*contd.*AGAINST PROPERTY—*contd.*

5	9	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	*Compound- able when permission is given by the Court be- fore which the prose- cution is pending.	Ditto ...	Ditto.
Ditto ...	* Not com- poundable.	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 7 years, or fine, or both.	Court of Ses- sion.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first second

(Amendment) Act, 1923 (XVII of 1923).

CODE OF CRIMINAL PROCEDURE.

SCHEDULE

CHAPTER XVII.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto
436	Mischief by fire or explosive substance with intent to destroy a house, etc.	Ditto	Ditto
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto	Ditto
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto	Ditto
439	Running vessel ashore with intent to commit theft, etc.	Ditto	Ditto
440	Mischief committed after preparation made for causing death, or hurt, etc.	Ditto	Ditto

II.—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 7 years, and fine.	Court of Ses- sion. Presi- dency Magis- trate or Magis- trate of the first class.
Not bail- able.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Ses- sion.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years, and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 10 years, and and fine.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 5 years, and fine.	Court of Ses- sion. Presi- dency Magis- trate or Magis- trate of first

SCHEDULE

CHAPTER XVII—OFFENCES

Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
<i>Of Criminal</i>			
447	Criminal trespass ...	May arrest without warrant.	Summons ...
448	House-trespass ...	Ditto ...	Warrant ...
449	House-trespass in order to the commission of an offence punishable with death...	Ditto ...	Ditto ...
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...

* Substituted by s. 159 of the Code of Criminal

11—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
<i>Trespass.</i>			
Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
Not bailable.	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
Bailable.	{Compoundable when permission is given by the Court before which the prosecution is pending.	Imprisonment of either description for 2 years, and fine.	Any Magistrate.

SCHEDULE

CHAPTER XVII.—OFFENCES

1	2	3	4
Section	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If the offence is theft.	Ditto	Ditto
452	House-trespass having made preparation for causing hurt, assault, etc.	Ditto	Ditto
453	Lurking house-trespass or house-breaking.	Ditto	Ditto
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto	Ditto
	If the offence is theft.	Ditto	Ditto
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc.	May arrest without warrant.	Warrant

II.—*contd.*AGAINST PROPERTY.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bailable.	Not compoundable.	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Ditto. ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, and fine.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 10 years, and fine.	Ditto.
Not bailable.	Ditto ...	Ditto ...	Court of Session, den

CHAPTER XVII—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
456	Lurking house-trespass or house-breaking by night.	Ditto	Ditto
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto	Ditto
	If the offence is theft	Ditto	Ditto
458	Lurking house-trespass or house-breaking by night after preparation made for causing hurt, etc.	Ditto	Ditto
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto	Ditto

11.—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
			trate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either description for 5 years, and fine.	Ditto
Ditto ...	Ditto ...	Imprisonment of either description for 14 years, and fine.	Ditto.
Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER XVII.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc.	Ditto	Ditto
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto	Ditto
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto	Warrant

[CHAPTER. XVIII—OFFENCES RELATING TO DOCUMENTS]

465	Forgery	Shall not arrest without warrant.	Warrant
466	Forgery of, a record of a Court of Justice or of a Register of Births, etc., kept by a public servant.	Ditto	Ditto

11.—*contd.*AGAINST PROPERTY—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 years, or fine, or both.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first or second class.

MENTS AND TO TRADE OR PROPERTY MARKS.

Bailable ...	Not com- poundable.	Imprisonment of either des- cription for 2 years, or fine, or both.	[Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Not bail- able.	Ditto ...	Imprisonment of either des- cription for 7 years, and fine.	Court of session.

CHAPTER XVIII.—OFFENCES RELATING TO DOCU

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.	Ditto	Ditto
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto	Ditto
471	Using as genuine a forged document which is known to be forged.	Ditto	Ditto
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto
472	Making or counterfeiting a seal, plate, etc., with intent to commit	Shall not arrest without	Ditto

II.—*contd.*MENTS AND TO TRADE OR PROPERTY MARKS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Bailable ...	Ditto ...	Imprisonment of either description for 3 years, and fine.	Ditto.
Ditto ...	Ditto ...	Punishment for forgery of such document.	Same Court as that by which the forgery is triable.
Ditto ...	Ditto ...	Ditto ...	Court of Session
Ditto ...	Ditto ...	Transportation for life or imprisonment of either	Ditto.

SCHEDULE

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	warrant.	
473	Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit.	Shall not arrest without warrant.	Warrant.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; If the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto	Ditto
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto	Ditto
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code,* or	Ditto	Ditto

* Substituted by s. 359 of the Code of Criminal

II.—*contd.*MENTS AND TO TRADE OR PROPERTY MARKS—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
		description for 7 years, and fine.	
Bailable ...	Not com- poundable.	Imprisonment of either des- cription for 7 years and fine.	Court of Session.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either des- cription for 7 years and fine.	Ditto ...
Ditto ...	Ditto ...	Ditto, ...	Ditto.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS.

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.
	possessing counterfeit marked material.		
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	Ditto
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc.	Ditto	Ditto
477A	Falsification of accounts.	Ditto	Ditto
<i>Of Trade and</i>			
482	Using a false trade or property mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant.

11.—*contd*MENTS AND TO TRADE OR PROPERTY MARKS—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bail- able.	Ditto ...	Imprisonment of either des- cription for 7 years, and fine.	Ditto.
Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.
*[Bailable.]	Ditto ...	*[Imprisonment of either description for 7 years, or fine or both.	*[Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.]

Property Marks.

Bailable.	* [Com- poundable when per- mission is given by the Court before	Imprisonment of either des- cription for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or sec- ond class.
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Procedure (Amendment) Act, 1923 (XVIII of 1923)

SCHEDULE

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
483	Counterfeiting a trade or property mark used by another, with intent to cause damage or injury.	Ditto	Ditto
484	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property.	Ditto	Summons
485	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property or trade-mark.	Ditto	Ditto
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto	Ditto

II.—*contd.*MENTS AND TO TRADE OR PROPERTY MARKS—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	which the prosecu- tion is pending.]		
Ditto ...	Ditto ...	Imprisonment of either des- cription for 2 years, or fine, or both.	Ditto.
Ditto ...	*Not com- poundable.	Imprisonment of either description for 3 years, and fine.	Court of Ses- sion, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 3 years, or fine, or both.	Ditto ...
Ditto ...	*[Com- poundable with per- mission of the Court before which the prosecu- tion is	Imprisonment of either des- cription for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or se- cond class.

SCHEDULE

CHAPTER XVIII.—OFFENCES RELATING 'TO DOCU

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
487	Fraudulently making a false mark upon any package or receptacle containing goods with intent to cause it to be believed that it contains goods which it does not contain, etc.	Ditto	Ditto
488	Making use of any such false mark.	Shall not arrest without warrant.	Summons
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto	Ditto

* Of Currency-Notes

489A	Counterfeiting currency-notes or bank-notes.	May arrest without warrant.	Warrant.
489B	Using as a genuine forged or counterfeit currency-notes or bank-notes.	Ditto	Ditto

* This portion was added to the Schedule by s. 3 of

II.—*contd.*MENTS AND TO TRADE OR PROPERTY MARKS.—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	pending.] *Nnt com- poundable.	Imprisonment of either des- cription for 3 years, or fine, or both.	Court of Ses- sion, Presiden- cy Magistrate or Magistrate of the first or second class. Ditto.
Bailable...	Not com- poundable	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either des- cription for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or se- cond class.

and Bank-Notes.

Not bailable.	Not com- poundable.	Transportation for life, or Imprisonment of either des- cription for 10 years, and fine.	Court of Session
Ditto ...	Ditto ...	Transportation for life, or Imprisonment of either description for 10 years, and fine	Ditto.

the Currency Notes Forgery Act, 1899 (XII of 1899.)

SCHEDULE

CHAPTER XVIII.—OFFENCES RELATING TO DOCU

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
489C	Possession of forged or counterfeit currency-notes or bank-notes.	Ditto	Ditto
489D	Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.	Ditto	Ditto

CHAPTER XIX.—CRIMINAL BREACH

490	Being bound by contract to render personal service during a voyage or journey or to convey or guard any property or person and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto	Ditto
492	Being bound by contract to render personal service for a certain period at a distant place to which the employee is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Ditto	Ditto

11.—*contd.*MENTS AND TO TRADE OR PROPERTY MARKS — *contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable
Bailable...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
Not bail- able.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto

OF CONTRACTS OF SERVICE.

Bailable...	Compound- able.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or se- cond class.
Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of double the ex- pense incurred, or both.	Ditto.

SCHEDULE

CHAPTER XIX.—OFFENCES

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
493	him in that belief.	Shall not arrest without warrant.	Warrant
494	Marrying again during the life time of a husband or wife.	Ditto	Ditto
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto	Ditto
496		Ditto	Ditto

* Substituted by s. 150 of the Code of Criminal Procedure

II.—*contd.*

RELATING TO MARRIAGE.

5.	6.	7.	8.
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Not bail- able.	Not com- poundable.	Imprisonment of either description for 10 years, and fine.	Court of Ses- sion.
Bailable...	* [Com- pound- able with permis- sion of the Court before which the prosecu- tion is pending.]	Imprisonment of either description for 7 years, and fine.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
* Bailable.	* Not com- pound- able.	Imprisonment of either description for 10 years, and fine.	* [Court of Ses- sion.]
Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.

(Amendment) Act, 1923 (XVIII of 1923.)

Cr. Pro.

CHAPTER XX.—OFFENCES RELATIVE TO

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
497	Adultery.	Ditto	Ditto
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	Ditto

CHAPTER XXI.—

500	Defamation.	Shall not arrest without warrant.	Warrant
501	Printing or engraving matter knowing it to be defamatory.	Ditto	Ditto
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto	Ditto

11.—*contd.*TING TO MARRIAGE.—*contd.*

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compound- able.	Imprisonment of either description for 5 years, or fine, or both.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

DEFAMATION.

Bailable ...	Compound- able.	Simple imprisonment for 2 years, or fine or both.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto

CHAPTER XX.—OFFENCES RELATIVE TO

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
497	Adultery.	Ditto	Ditto
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	Ditto

CHAPTER XXI.—

500	Defamation.	Shall not arrest without warrant.	Warrant
501	Printing or engraving matter knowing it to be defamatory.		Ditto
502	Sale of printed or engraved matter containing defamatory matter, knowing it to be such matter.		Ditto

II.—*contd.*TING TO MARRIAGE.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

DEFAMATION.

Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XX.—OFFENCES RELA

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
497	Adultery.	Ditto	Ditto
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	Ditto

CHAPTER XXI.—

500	Defamation.	Shall not arrest without warrant.	Warrant
501	Printing or engraving matter knowing it to be defamatory.	Ditto	Ditto
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto	Ditto

II.—*contd.*TING TO MARRIAGE.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

DEFAMATION.

Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
Ditto ...	Ditto ...	Ditto ...	Ditto.
Ditto ...	Ditto ...	Ditto ...	Ditto.

CHAPTER XXII—CRIMINAL INTIMIDATION

1	2	3	4
Section.	Offence.	Whether, the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue to the first instance.
504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...
505	False statement, rumour, etc., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...
506	Criminal Intimidation.	Ditto ...	Ditto ...
507	If threat be to cause death, or grievous hurt, etc.	Ditto ...	Ditto ...
507	Criminal Intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...

* These words were substituted for the word "Ditto" by Part II of the

II.—*contd.*

TION, INSULT AND ANNOYANCE.

5	6	7	8
Whether bailable or not.	Whether com- poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Bailable ...	Compound- able.	Imprisonment of either description for 2 years, or fine, or both.	Any Magis- trate.
Not bail- able.	Not com- pound- able.	Ditto ...	Presidency Magistrate or Magistrate of the first class.
Bailable ...	Compound- able.	Ditto ...	* [Presidency Magistrate or Magistrate of the first and second class.]
Ditto ...	Not com- pound- able.	Imprisonment of either description for 7 years, or fine, or both.	Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto.

Second Schedule to the Repealing and Amending Act, 1933 (1 of

CHAPTER XXII.—CRIMINAL INTIMIDA

1 Section	2 Offence	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto	Ditto
509	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Shall not arrest without warrant.	Warrant
510	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Ditto	Ditto

CHAPTER XXIII.—ATTEMPTS TO

511	Attempting to commit offences	According as the offence is in respect of which police	According as the offence is one in respect of which a sum-
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11.—*contd.*TION, INSULT AND ANNOYANCE.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	*[Compoundable.]	Imprisonment of either description for 3 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	* [Compoundable when permission is given by the Court before which the prosecution is pending.]	Simple Imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	*[Not compoundable]	Simple Imprisonment for 24 hours or fine of 10 rupees, or both.	Any Magistrate.

COMMIT OFFENCES.

According as the offence contemplated by the	Compoundable when the offence attempted is com-	Transportation or Imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or	The Court by which the offence attempted is triable.
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(Amendment) Act, 1923 (XVIII of 1923).

CHAPTER XXII.—CRIMINAL INTIMIDA

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
598	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto	Ditto
599	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Shall not arrest without warrant.	Warrant
600	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Ditto	Ditto

CHAPTER XXIII.—ATTEMPTS TO

511	Attempting to commit offence	as offence in case of a sum.
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† Substituted by s. 159 of the Code of Criminal Procedure

11.—*contd.*TION, INSULT AND ANNOYANCE.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	*[Com- p o u n d - able.]	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or se- cond class.
Ditto ...	* [C o m - poundable when per- mission is given by the Court before which the prosecu- tion is pending.]	Simple Imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	*[Not com- p o u n d - able.	Simple Imprisonment for 24 hours or fine of 10 rupees, or both.	Any Magistrate.

COMMIT OFFENCES.

According as the of- fence con- templated by the	Compound- able when the offence attempted is com-		by
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(Amendment) Act, 1923 (XVIII of 1923).

CHAPTER XXII.—CRIMINAL INTIMIDA

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
598	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto	Ditto
599	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Shall not arrest without warrant.	Warrant
600	Appearing in a public place, etc., in a state of intoxication, and causing annoyance to any person.	Ditto	Ditto

CHAPTER XXIII.—ATTEMPTS TO

591	Attempting to commit offence	According as offence is one in respect of
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11.—*contd.*TION, INSULT AND ANNOYANCE.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
Ditto ...	*[Compoundable.]	Imprisonment of either description for 3 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
Ditto ...	*[Compoundable when permission is given by the Court before which the prosecution is pending.]	Simple Imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
Ditto ...	*[Not compoundable.]	Simple Imprisonment for 24 hours or fine of 50 rupees, or both.	Any Magistrate.

COMMIT OFFENCES.

According as the offence contemplated by the	Compoundable when the offence attempted is com-	Transportation or Imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or	The Court by which the offence attempted is triable.
--	---	--	--

(Amendment) Act, 1923 (XVIII of 1923).

SCHEDULE

CHAPTER XXIII.—ATTEMPTS TO

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
30	If punishable with death, transportation or imprisonment for 7 years or upwards.	May arrest without warrant.	Warrant shall ordinarily issue.
31	If punishable with imprisonment for 3 years and upwards, but less than 7.	Idto	Idto
32	If punishable with imprisonment for 1 year and upwards, but less than 3 years.	Shall not arrest without warrant.	Summons
33	If punishable with imprisonment for less than 1 year, or with fine only.	Idto	Idto

11.—*contd.*COMMIT OFFENCES.—*contd.*

5	6	7	8
Whether bailable or not.	Whether compound- able or not.	Punishment under the Indian Penal Code.	By what Court triable.
offender is bailable or not.	compound- able.	both.	
Not bail- able.	Not com- pound- able.		Court of Ses- sion.
Not bail- able except in cases under the Indian Arms Act 1878, sec- tion 19, which shall be bailable.	Ditto ...		Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first class.
Bailable ...	Ditto ...		Court of Ses- sion, Presi- dency Magis- trate or Magis- trate of the first or sec- ond class.
Ditto ...	Ditto ...		Any Magistrate.

SCHEDULE

CHAPTER XXIII.—ATTEMPTS TO

1	2	3	4
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.
	If punishable with death, transportation or imprisonment for 7 years or upwards.	May arrest without warrant or not.	Warrant or summons shall ordinarily issue.
	If punishable with imprisonment for 3 years and upwards, but less than 7.	May arrest without warrant.	Warrant
		Ditto	Ditto
	If punishable with imprisonment for 1 year and upwards, but less than 3 years.	Shall not arrest without warrant.	Summons
	If punishable with imprisonment for less than 1 year, or with fine only.	Ditto	Ditto

- (15) Power to detain an offender found in court, section 351.
- (16) Power to take cognizance of offence, although committed by European British subject, and to issue process returnable before a Magistrate having jurisdiction, section 445.
- (17) Power to apply to District Magistrate to issue commission for examination of witness, section 506 (2).
- (18) Power to recover forfeited bond for appearance before Magistrate's Court, section 514 ² [and to require fresh security, section 514A].
- ² [(18a) Power to make order as to custody and disposal of property pending inquiry or trial, section 516A.]
- (19) Power to make order as to disposal of property, section 517.
- (20) Power to sell ² property of a suspected character, section 525.
- ² [(21) Power to require affidavit in support of application, section 539A.]
- ² [(22) Power to make local inspection, 539B.]

II.—Ordinary Powers of a Magistrate of the Second Class.

- (1) The ordinary powers of a Magistrate of a third class.
- (2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction, to try or commit for trial, section 155.
- ² [(3) Power to postpone issue of process and to inquire into a case or direct investigation, section 202.] ²

III.—Ordinary Powers of a Magistrate of the First Class.

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
- (3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
- (4) Power to require security to keep the peace, section 107.

² These words, figures and letter were added by *ibid.*

² Inserted by Act 18 of 1923.

² The word "perishable" was omitted by *ibid.*

² This item was substituted by *ibid.*

² Items omitted by *ibid.*

(5) Power to require security for good behaviour, section 109.

(6) Power to discharge sureties, section 126A.

* [(6a) Power to make orders as to local nuisances, section 133].

(7) Power to make orders, etc., in possession cases, sections 145, 146 and 147.

* [(7a) Power to record statements and confessions during a police investigation, section 164.]

* [(7aa) Power to authorize detention of a person in the custody of the police during a police investigation, section 167.]

* [(7b) Power to hold inquests, section 174.]

(8) Power to commit for trial, section 206.

(9) Power to stop proceedings when no complaint, section 249.

* [(9a) Power to tender pardon to accomplice, during inquiry into case by himself, section 337.]

(10) Power to make orders of maintenance, sections 488 and 489.

(11) Power to take evidence on commission, section 503.

(12) Power to examine witnesses on oath, section 504.

*

*

* Magis-

(13) Power to make order as to first offenders, section 562.

* [(14) Power to order released convicts to notify residence, section 565.]

IV.—Ordinary Powers of a Subdivisional Magistrate * [appointed under section 13].

(1) The ordinary powers of a Magistrate of the first class.

(2) Power to direct warrants to landholders, section 78.

(3) Power to require security for good behaviour, section 109.

* These figures and letter were substituted for the figures "126" by section 100 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

* These items was inserted by *ibid.*

* This item was added by *ibid.*

* These words and figures were inserted by *ibid.*

* The items (4) and (10) were omitted by *ibid.*

- (5) Power to make orders prohibiting repetitions of nuisances, section 143.
- (6) Power to make orders under section 143.
- (7) Power to depute Subordinate Magistrate to make local inquiry, section 148.
- (8) Power to order police investigation into cognizable case, section 156.
- (9) Power to receive report of police-officer and pass order, section 173.
- • • • •
- (11) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
- (12) Power to entertain complaints, section 190.
- (13) Power to receive police-reports, section 190.
- (14) Power to entertain cases without complaints, section 190.
- (15) Power to transfer cases to a Subordinate Magistrate, section 192.
- (16) Power to pass sentence on proceedings recorded by Subordinate Magistrate, section 349.
- (17) Power to forward record of inferior Court to District Magistrate, section 435 (2).
- (18) Power to sell property alleged or suspected to have been stolen, etc., section 524.
- (19) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.
- • • • •

V.—Ordinary Powers of a District Magistrate.

- (1) The ordinary powers of a Subdivisional Magistrate.
- * [(1a) Power to try juvenile offenders, section 29A.]
- (2) Power to require delivery of letters, telegrams, etc., section 95.
- (3) Power to issue search-warrants for documents in custody of postal or telegraph authority, section 96.

* The items (10 and 20) were omitted by s. 160 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

* These items were inserted by s. 160 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

- (4) Power to require security for good behaviour in case of sedition, section 108.
- (5) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
- (6) Power to cancel bond for keeping the peace, section 125.
- ² [(6a) Power to order preliminary investigation by police-officer not below the rank of Inspector in certain cases, section 196B.]
- (7) Power to try summarily, section 260.
- ³ [(7a) Power to tender pardon to accomplice at any stage of a case, section 337.]
- (8) Power to quash convictions in certain cases, section 350.
- (9) Power to hear appeals from orders requiring security for [keeping the peace or] good behaviour, section 406.
- ⁴ [(9a) Power to hear appeals from orders of Magistrates refusing to accept or rejecting sureties, section 406A.]
- (10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
- (11) Power to call for records, section 435.
- ⁵ [(12)] Power to order inquiry into complaint dismissed or case of accused discharged, section ⁶ [436].
- ⁷ [(13)] Power to order commitment, section ⁸ [437].
- (14) Power to report case to High Court, section 438.
- (15) Power to try European British Subjects, section 443.
- (16) Power to sentence European British subjects to more than three months' imprisonment, or, one thousand rupees fine, or both, section 446.
- (17) Power to appoint person to be public prosecutor in particular case, section 492 (2).
- (18) Power to issue commission for examination of witness, sections 503, 506.
- (19) Power to hear appeals from or revise orders passed under sections 514, 515.
- (20) Power to compel restoration of abducted female, section 551.

¹ These words were inserted by *ibid.*

² Original items (12) and (13) were re-numbered (13) and (12) respectively by *ibid.*

³ These figures were substituted for the figures "437" by *ibid.*

⁴ These figures were substituted for the figures "436" by *ibid.*

SCHEDULE IV.

(See sections 37 and 38)

Additional powers with which Provincial Magistrates
may be invested.

Powers with which a Magistrate of the first class may be invested.

By the Local Government.

- (1) Power to require security for good behaviour in case of sedition, section 108.
- (2) Power to require security for good behaviour, section 110.
- (4) Power to make orders prohibiting repetitions of nuisances, section 143.
- (5) Power to make orders under section 144.
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
- (8) Power to take cognizance of offences upon complaint, section 190.
- (9) Power to take cognizance of offences upon police reports section 190.
- (10) Power to take cognizance of offences without complaint, section 190.
- (11) Power to try summarily section 260.
- (12) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407.
- (13) Power to sell property alleged or suspected to have been stolen, etc., section 524.
- (15) Power to try cases under section 224A of the Indian Penal Code.

* Items (3), (6) and (14) were omitted by s. 161 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.
- (2) Power to make orders under section 144.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police reports, section 190.
- (6) Power to transfer cases, section 192.

Powers with which a Magistrate of the second class may be invested.

By the Local Government.

- (2) Power to make orders prohibiting repetitions of nuisances, section 143.
- (3) Power to make orders under section 144.
- [(3a) Power to record statements and confessions during a police investigation, section 164].
- [(3b) Power to authorise detention of a person in the custody of the police during a police investigation, section 167].
- (4) Power to hold inquests, section 174.
- (5) Power to take cognizance of offences upon complaint, section 190.
- (6) Power to take cognizance of offences upon police reports, section 190.
- (7) Power to take cognizance of offences without complaint, section 190.
- (8) Power to commit for trial, section 206.
- (9) Power to make order as to first offenders, section 562.

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.

* Item (1) was repealed by the Whipping Act, 1909 (IV of 1909).

* Item (3) was omitted by *ibid*.

* These items were inserted by s. 161 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

- (2) Power to make orders under section 144.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section 190.

Powers with which a Magistrate of the third class may be invested.

By the Local Government.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section, 190.

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances section 143.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section 190.

Powers with which a Subdivisional Magistrate may be invested.

By the Local Government.

Power to call for records, section 435.

* Items (2) and (6) were omitted by *ibid.*

* Item (2) was omitted by *ibid.*

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.
- (2) Power to make orders under section 144.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police reports, section 190.
- (6) Power to transfer cases, section 192.

Powers with which a Magistrate of the second class may be invested.

By the Local Government.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.
- (3) Power to make orders under section 144.
- [(3a) Power to record statements and confessions during a police investigation, section 164].
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police reports, section 190.
- (6) Power to take cognizance of offences without complaint, section 190.
- (8) Power to commit for trial, section 206.
- (9) Power to make order as to first offenders, section 562.

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.

* Item (1) was repealed by the Whipping Act, 1909 (IV of 1909).

* Item (3) was omitted by *ibid.*

* These items were inserted by s. 161 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

- (2) Power to make orders under section 144.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section 190.

Powers with which a Magistrate of the third class may be invested.

By the Local Government.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section, 190.

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances section 143.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section 190.

Powers with which a Subdivisional Magistrate may be invested.

By the Local Government.

- Power to call for records, section 435.

* Items (2) and (6) were omitted by *ibid.*

* Item (2) was omitted by *ibid.*

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.
- (2) Power to make orders under section 144.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police reports, section 190.
- (6) Power to transfer cases, section 192.

Powers with which a Magistrate of the second class may be invested.

By the Local Government.

- (2) Power to make orders prohibiting repetitions of nuisances, section 143.
- (3) Power to make orders under section 144.
- [(3a) Power to record statements and confessions during a police investigation, section 164].
- (3b) Power to take cognizance of offences upon police reports, section 190.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police reports, section 190.
- (6) Power to take cognizance of offences without complaint, section 190.
- (8) Power to commit for trial, section 206.
- (9) Power to make order as to first offenders, section 562.

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.

* Item (1) was repealed by the Whipping Act, 1909 (IV of 1909).

* Item (3) was omitted by *ibid.*

* These items were inserted by s. 161 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

- (2) Power to make orders under section 144.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section 190.

Powers with which a Magistrate of the third class may be invested.

By the Local Government.

- (1) Power to make orders prohibiting repetitions of nuisances, section 143.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section, 190.

By the District Magistrate.

- (1) Power to make orders prohibiting repetitions of nuisances section 143.
- (3) Power to hold inquests, section 174.
- (4) Power to take cognizance of offences upon complaint, section 190.
- (5) Power to take cognizance of offences upon police-reports, section 190.

Powers with which a Subdivisional Magistrate may be invested.

By the Local Government.

Power to call for records, section 435.

* Items (2) and (6) were omitted by *ibid.*
 * Item (2) was omitted by *ibid.*

SCHEDULE V.

(See section 555.)

FORMS.

1.—Summons to an accused person.

(See section 68.)

To _____ of _____

WHEREAS your attendance is necessary to answer to a charge of
 (state shortly the offence charged), you are hereby required to appear in
 person (or by pleader, as the case may be) before the (Magistrate)

the _____ of _____, Herein fail not.
 day of _____, 18 _____

Dated this _____ day of _____, 18 _____

(Seal.) _____ (Signature.)

II.—Warrant of Arrest.

(See section 75.)

To (name and designation of the person or persons who is or are
 to execute the warrant),

WHEREAS _____ of _____ stands
 charged with the offence of (state the offence), you are hereby directed to
 arrest the said _____ and
 to produce him before me. Herein fail not.

Dated this _____ day of _____, 18 _____

(Seal.) _____ (Signature)

(See section 76.)

This warrant may be endorsed as follows:—

If the said _____ shall give bail himself in the sum
 of _____, with one surety in the sum of _____ (or two
 sureties each in the sum of _____) to attend before
 me on the _____ day of _____, 18 _____

* These figures were substituted for the figures "554" by Part II
 of the Second Schedule to the Repealing and Amending Act, 1903
 (1 of 1903).

continue so to attend until otherwise directed by me, he may be released,

Dated this _____ day of _____ 18 .
(Signature,)

III—Bond and bail-bond after arrest under a warrant.

(See section 86)

I (name), of _____, being brought before the District Magistrate of _____ (or as the case may be) under a warrant issued to compel my appearance to answer to the charge of _____, do hereby bind myself to attend in the Court of _____ on the _____ day of _____ next, to answer to the said charge, and to continue so to attend until otherwise directed by the Court, and, in case of my making default herein, I bind myself to forfeit, to Her Majesty the Queen, Empress of India, the sum of rupees _____

Dated this _____ day of _____ 18 .
(Signature,)

I do hereby declare myself surety for the abovenamed _____ of _____, that he shall attend before _____ in the Court of _____ on the _____ day of _____ next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and in case of his making default therein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees _____

Dated this _____ day of _____ 18 .
(Signature,)

IV.—Proclamation requiring the appearance of a person accused.

(See section 87.)

Whereas complaint has been made by _____ name, d
_____ comm

Has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant) ;

Proclamation is hereby made that the said is required to appear at (place) before this Court (before me) to answer the said complaint (on the day of)

Dated this

day of

18

(Signature)

V.—Proclamation requiring the attendance of a witness.

(See section 87.)

WHEREAS complaint has been made before me that (name, description and address) has committed (or is suspected to have committed) the offence of (mention the offence concisely) and a warrant has been issued to compel the attendance of (name description and address of the witness) before this Court to be examined touching the matter of the said complaint ; and whereas it has been returned to the said warrant that the said (name of witness) cannot be served, and it has been shown to my satisfaction that he absconded (or is concealing himself to avoid the service of the said warrant) ;

Proclamation is hereby made that the said (name) is required to appear at (place) before the Court of on the day of next at o'clock to be examined touching the offence complained of.

Dated this

day of

18

{Seal.}

{Signature.}

VI.—Order of attachment to compel the attendance of a witness.

(See section 88.)

To the Police-officer in charge of the Police-station at

* These words were substituted for the words, "within days from the date" by Part II of the Second Schedule to the Repealing and Amending Act, 1903 (1 of 1903).

WHEREAS a warrant has been duly issued to compel the attendance of (name, description and address) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant

This is to authorize and require you to attach by seizure the move-
able property belonging to the said _____ in the value of rupees

_____ the further
certifying the manner of its execution, endorsement
Dated this _____ day of _____ 18 ____
(Seal.) (Signature.)

Order of attachment to compel the appearance of a person accused.

(See section 88.)

To (name and designation of the person or persons who is or are to
execute the warrant),

Whereas complaint has been made before me that (name, descrip-
tion to have committed) the
section _____ of the
to a warrant of arrest
found; and whereas it
(name) has absconded
of the said warrant), and
duly issued] and pub-
answer the said charge
is possessed of the

* These words were substituted for the words "Proclamation was
duly issued" by s. 162 of the Code of Criminal Procedure (Amendment)
Act, 1923 (XVIII of 1923).

* The words "and he has failed to appear" were omitted by *ibid.*

* These words were substituted for the words "Proclamation was
duly issued" by section s. 162 of the Code of Criminal Procedure (Amend-
ment) Act, 1923 (XVIII of 1923).

following property other than land paying revenue to Government in the village (or town) of _____, in the District of _____, viz., _____, and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Date this _____ day of _____ 18 ____

(Seal) _____ (Signature.)

Order authorizing an attachment by the Deputy Commissioner as Collector.

(See section 83)

To the Deputy Commissioner of the District of _____

WHEREAS complaint has been made before me that (name, description and address) has committed, (or is suspected to have committed) the offence of _____, punishable under section _____

and that he has not appeared to answer a warrant of arrest issued by me as Magistrate of the District of _____, and that he is a public charge within _____ days, and who is the said _____

is possessed of certain land paying revenue to Government in the village (or town) of _____ in the District of _____

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this _____ day of _____ 18 ____

(Seal.) _____ (Signature.)

* Vide note 2 at p. 565.

* The words "but he has not appeared" were omitted by *ibid.*

VII—Warrant in the first instance to bring up a witness.

(See section 90.)

To *(name and designation of the Police officer or other person or persons who is or are to execute the warrant.)*

WHEREAS complaint has been made before me that
of _____ has (or is suspected to have) committed the offence
of _____

to do so ;

This is to authorize and require you to arrest the said *(name)*, and on
the _____ day of _____ to bring him before this
Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this _____ day
of _____ 18 _____

(Seal.)

(Signature)

VIII—Warrant to search after information of a particular offence.

(See section 96)

To *(name and designation of the Police officer or other person or persons who is or are to execute the warrant)*

WHEREAS information has been laid (or complaint has been made)
before me of the commission (or suspected commission) of the offence of
(mention the offence concisely), and it has been made to appear to me
that the production of *(specify the thing clearly)* is essential to the inquiry
now being made or about to be made into the said offence or suspected
offence ;

This is to authorize and require you to search for the said *(the thing specified)* in the *(describe the house or place or part thereof to which the search is to be confined)* and, if found to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, the _____ day
of _____ 18 _____

(Seal.)

(Signature)

IX.—Warrant to search suspected Place of Deposit.

(See section 98).

To (name and designation of a Police-officer, above the rank of a Constable,

WHEREAS information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (describe the house or other place) is used as a place for the deposit (or sale) of stolen property or if for either of the other purposes expressed in the section state the purpose in the words of the section;

This is to authorize and require you to enter the said house (or other place) with such assistance as shall be required, and to use if necessary reasonable force for that purpose and, to search every part of the said house (or other place, of if the search is to be confined to a part, specify

facture of forged documents, or counterfeit stamps, or false seals or counterfeit coin (as the case may be)), and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(Seal.)

(Signature)

X.—Bond to keep the peace.

(See section 107.)

the said inquiry] and in case of my making default therein, I hereby

* The words within quotations have been substituted by Act 8 of 1925.
 (†) These words were inserted by s. 162 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this

day of

18

(Signature.)

XI—Band for Good Behaviour.

(See sections 103, 100 and 110.)

WHEREAS I (name), inhabitant of (place), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all Her subjects for the term of (state the period) [or until the completion of the inquiry in the matter of

sum of rupees

Dated this

day of

18

(Signature)

(Where a bond with sureties is to be executed, add)—We do hereby declare ourselves sureties for the abovenamed _____ that he will be of good behavior and to all _____ the said _____ ourselves.

Dated this

day of

18

(Signature).

XII.—Summons on information of a Probable breach of the peace.

(See section 174.)

To _____ of _____
WHEREAS it has been made to appear to me by credible information
that *(state the substance of the information)*, and that you are likely to

* These words were inserted by s. 162 of the Code of Procedure (Amendment) Act, 1923 (XVIII of 1923).

commit a 'breach of the peace' (or by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (or by a duly authorized agent) at the Office of the Magistrate of _____ on the _____ day of _____ 18____, at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [when sureties are required add, and also to give security by the bond of one (or, two, as the case may be) surety (or sureties) in the sum of rupees _____ (each if more than one)] that you will keep the peace for the term of _____

Given under my hand and the seal of the Court, this _____ day of _____ 18____.

(Seal.) _____ (Signature.)

XIII.—Warrant of Commitment on Failure to find Security to keep the peace.

(See section 123.)

To the Superintendent (or Keeper) of the Jail at _____

WHEREAS (name and address) appeared before me in person (or by his authorized agent) on the _____ day of _____ in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees _____ with one surety (or a bond with two sureties each in rupees _____), that he, the said (name), would keep the peace for the period of _____ months; and whereas an order was then made requiring the said (name) to enter into and find such security (state the security ordered when it differs from that mentioned in the summons), and he has failed to comply with the said order; _____

This is to authorize and require you, the said Superintendent (or _____ this _____

Given under my hand and the seal of the Court, this _____ day of _____ 18____.

(Seal.) _____ (Signature.)

* These words were substituted for the words "comply with the said order by himself and his surety (or sureties) entering into the said bond, in which case the same shall be received, and the said (name) released" by Part II of the Second Schedule to the Repealing and Amending Act, 1903 (I of 1903) (G.O. 111727; 21.11.03).

XIV.—Warrant of commitment on Failure to find Security for Good Behaviour.

(See section 123.)

To the Superintendent (or Keeper) of the Jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the district of having no ostensible means of subsistence (or, that he is unable to give any satisfactory account of himself);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded, from which it appears that he is an habitual robber (or house-breaker, etc., as the case may be);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (or two or more sureties, as the case may be), himself for rupees , and the said surety (or each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime be lawfully ordered to be released and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this
day of 18 .

(Seal.)

(Signature.)

* These words were substituted for the words "comply with the said order by himself and his surety (or sureties) entering into the said" in which case the same shall be received, and the said (*name*) released by the Repealing and Amending Act 1903 (S. I of 1903) 3 and 4. Second Schedule.

XV.—Warrant to discharge a Person imprisoned on Failure to give Security.

(See sections 123 and 124.)

To the Superintendent (or ^{or Keeper} ~~Keeper~~) of the Jail at (or
other officer in whose custody the person is).

WHEREAS *(name and description of prisoner)* was committed to your custody under warrant of the Court, dated the *day* of *and has since duly given security under section* of the Code of Criminal Procedure ;

or

and there has appeared to me sufficient grounds for the opinion that he can be released without hazard to the community ;

This is to authorize and require you forthwith to discharge the said *(name)* from your custody unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of *18*

(Seal.)

(Signature.)

XVI.—Order for the removal of Nuisances.

(See section 133.)

To *(name, description and address).*

WHEREAS it has been made to appear to me that you have caused an obstruction (or nuisance) to persons using the public roadway (or other public place) which, etc., *(describes the road or public place), by, etc., (state what it is that causes the obstruction or nuisance),* and that such obstruction (or nuisance) still exists ;

or

WHEREAS it has been made to appear to me that you are carrying

at the
 briefly
 sup-

or

WHEREAS it has been made to appear to me that you are owner (or are in possession of or have the control over) a certain tank (or well or excavation) adjacent to the public way *(describe the thorough fare),*

and that the safety of the public is endangered by reason of the said tank (or well or excavation) being without a fence (or insecurely fenced);

or

WHEREAS, etc., (as the case may be);

I do hereby direct and require you within (state the time allowed) to (state what is required to be done to abate the nuisance) or to appear at _____ in the _____ Court of _____ on the _____ day of _____ next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (state the time allowed) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, etc.;

or

I do hereby direct and require you within (state the time allowed) to put up a sufficient fence (state the kind of fence and the part to be fenced); or to appear, etc.;

or

I do hereby direct and require you, etc., (as the case may be).

Given under my hand and the seal of the Court, this _____ day of _____ 18____. (Seal.) _____ (Signature.)

XVII.—Magistrate's Order constituting a Jury.

(See section 138.)

WHEREAS on the _____ day of _____ 18____, an order was issued to (name) requiring him (state the effect of the order) and whereas the said (name) has applied to me, by a petition bearing date the _____ day of _____ for an order appointing a Jury to try whether the said

Given under my hand and the seal of the Court, this _____ day of _____ 18____.

(Seal.)

XVIII.—Magistrate's Notice and Peremptory Order after the Finding by a Jury.

(See section 140).

To (name, description and address).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (state substantially the requisition in the order) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (state the time allowed), on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of 18

(Seal.) (Signature.)

XIX.—Injunction to provide against Imminent Danger pending Inquiry by Jury.

(See section 142.)

To (name, description and address).

WHEREAS the inquiry by a Jury appointed, to try whether my order issued on the day of 18 is reasonable and proper is still pending and, it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (state plainly what is required to be done as a temporary safe guard), pending the result of the local inquiry by the Jury.

Give under my hand and the seal of the Court, this day of 18

(Seal.) (Signature.)

XX.—Magistrate's Order Prohibiting the Repetition, etc of a Nuisance.

(See section 143.)

To (name, description and address).

WHEREAS it has been made to appear to me that, etc., (state the proper recital, guided by Form No. XVI of Form No. XXI as the case may be),

being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (name or names or description) is true :

I do decide and declare that he is (or they are) in possession of the said (the subject of dispute) and entitled to retain such possession until ousted by the due course of law, and do, strictly, forbid any disturbance of his (or their) possession in the meantime.

Give under my hand and the seal of the Court, this _____ day of _____ 18 _____

(Seal.) _____ (Signature).

XXIII.—Warrant of Attachment in the Case of a Dispute as to the Possession of Land, etc.

(See Section 446.)

To the Police-officer in charge of the Police-station at _____
[or To the Collector of _____]

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed, between (describe the parties concerned by name and residence or residence only if the dispute be between bodies of persons) _____ (the subject of dispute) situated thereupon _____ claims as to the _____

I have decided that _____ (the subject of dispute) the said parties

_____ (the subject of dispute) to hold the same _____ Court determination, shall have _____

_____ the manner of its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 18 _____

(Seal.) _____ (Signature)

XXIV.—Magistrate's Order prohibiting the doing of anything on Land or Water.

(See Section 147.)

I, the undersigned Magistrate, do hereby prohibit the doing of anything on the land or water of use of (state contents of my jurisdiction, exclusively by (describe on due inquiry into the reason to the enjoyment of or a class of persons be enjoyed throughout him three months of the enjoyment only at particular times at which the same is

I do order that the said (the claimant or claimants of possession), or any one in their interest, shall not take (or retain) possession of the said land (or water) to the exclusion of the enjoyment of the right of use aforesaid, until he (or they) shall obtain decree or order of a competent Court adjudging him (or them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this _____ day of _____ 18 ____.

Seal. _____ (Signature)

XXV—Bond and Bailbond on a Preliminary Inquiry before a Police-officer.

(See section 169)

I (name), of _____, being charged with the offence of _____ and after inquiry required to appear before the Magistrate of _____

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at _____, in the Court of _____, on the _____ day of _____ next (or on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees _____

Dated this _____ day of _____ 18 ____.

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the abovesaid that he shall attend at _____ in the Court of _____ on the _____ day of _____ (or as he is required to attend), _____ and, in case of _____ if (or we hereby bind _____ Empress of India, the sum of rupees _____

Dated this _____ day of _____ 18____ (Signature.)

XXVI.—Bond to prosecute or give Evidence.

(See Section 170.)

I (name), of (place), do hereby bind myself to attend at _____ in the Court of _____ at _____ o'clock on the _____ day of _____ next and then and there to prosecute (or to prosecute and give evidence) (or to give evidence) in the matter of a charge of _____ against one A., B., and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees _____

Dated this _____ day of _____ 18____ (Signature.)

XXVII.—Notice of Commitment by Magistrate to Government Pleader.

(See section 218.)

THE Magistrate of _____ hereby gives notice that he has committed one _____ for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, etc., (state the offence as in the charge.) _____

Dated this _____ day of _____ 18____

XXVIII.—Charges.

(See sections 221, 222, 223.)

(a) I [name and office of Magistrate, etc.] hereby charge you [name of accused person] as follows:—

(b) that you, on or about the _____ day of _____ at _____

On Penal Code, sec. _____ against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [when the charge was committed]

is framed by a Presidency Magistrate, for Court of Session substitute High Court].

((c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b)] :—

(2) That you, on or about the _____ day of _____
 at _____, with the intention of inducing the Hon'ble A. B., Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(3) That you, being a public servant in the _____ Department, directly accepted from [state the name], for another party [state the name] a gratification other than legal remuneration, as a motive _____, and thereby _____ Indian Penal _____ High Court].

On section 166. _____ at _____, did [or omitted to do, as the case may be] such conduct being contrary to the provisions of _____ Act _____, section _____, and known by you to be prejudicial to _____, and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(5) That you, on or about the _____ day of _____
 On section 193. _____ believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(6) That you, on or about the _____ day of _____
 at _____, committed culpable homicide not amounting to murder, causing the death _____, and thereby committed _____ offence punishable under section 304 of Indian Penal Code, and within the cognizance of the Court of [or High Court.]

(7) That you, on or about the _____ day of _____ at _____ abetted the commission of _____ On the section 306, _____ suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code and within the cognizance of the Court of Session [or High Court].

(8) That you, on or about the _____ day of _____ at _____ voluntarily caused grievous _____ On the section 325, _____ hurt to _____ and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(9) That you, on or about the _____ day of _____ at _____ robbed [state the name], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(10) That you, on or about the _____ day of _____ at _____ committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrate substitute "within my cognizance" for "within the cognizance of the Court of Session," and to (c) omit "by the said Court."]

(II) Charge with two or More Heads.

(a) I [name and office of Magistrate, etc.] hereby charge you [name of accused person] as follows:—

(b) First.—That you, on or about the _____ day of _____ at _____ knowing a coin to be counterfeit, delivered the same to another person, _____ On section 241, _____ by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

Secondly.—That you, on or about the _____ day of _____ at _____ knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate]

[To be substituted for (b)]:—

(2) *First*—That you, on or about the _____ day of _____, at _____, committed murder by causing the death of _____, and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly—That you, on or about the _____ day of _____, at _____, by causing the death of _____, committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(3) *First*.—That you, on or about the _____ day of _____, at _____, committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the _____ day of _____, at _____, committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Thirdly.—That you, on or about the _____ day of _____, at _____, committed theft, having made preparation for _____, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Fourthly.—That you, on or about the _____ day of _____, at _____, committed theft, having made preparation for _____, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(4) That you, on or about _____ day of _____, in the course of the inquiry into _____, before _____, stated in evidence that "_____ about the _____ day of _____ at _____, in the course of the trial of _____ before _____, in the evidence that "_____ one of which either knew or believed to be false, or did not believe to

thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrate substitute "within my cognizance" for "within the cognizance of the Court of Session" and in (c) omit "by the said Court,"]

[In (d) High Court substitute Magistrate]

(III) Charge for Theft after previous Conviction.

I (name and office of Magistrate, etc.), hereby charge you (name of accused person) as follows:—

That you, on or about the _____ day of _____ at _____, committed theft, and thereby committed an offence punishable under section 379, of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court as the case may be, Magistrate].

And you, the said (name of accused), stand further charged that you, before the committing of the said offence, that is to say, on the _____ day of _____, had been convicted by the (state Court by which convicted) _____ of an offence punishable under _____

are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, etc.

XXIX.—Warrant of Commitment on a Sentence of Imprisonment or Fine if passed by a Magistrate.

(See sections 245 and 258).

To the Superintendent (or Keeper) of the Jail at _____

WHEREAS on the _____ day of _____ 18____ name of _____ prisoner in case No _____

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (prisoner's name) into your custody in the said Jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day
 of 18 .
 (Seal.) (Signature)

**XXX.—Warrant of Imprisonment on Failure to recover amends
 by ' [attachment and sale].**

(See section 250.)

To Superintendent (or Keeper) of the Jail at

Whereas complaint has been made before me that
 of the sum of rupees as amends; and whereas the said
 sum has not been paid and an order has been made
 for his simple imprisonment to Jail for the period of
 days, unless the sforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent (or
 Keeper) to receive the said sum with this
 period of the In-
 receipt
 ant with

Given under my hand and the seal of the Court, this day of
 18 .
 (Seal.) (Signature).

XXXI.—Summons to Witness.

(See sections 68 and 252.)

To of .

WHEREAS complaint has been made before me that
 has (or is suspected to have) committed the offence of

* These words were substituted for the word "Distress" by s. 162 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

* These words were inserted by *ibid.*

* The words "and cannot be recovered by distress of the moveable property of the said (name of complainant)" were omitted by s. 162 of Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of

(state the offence concisely with time and place), and it appears to me that you are likely to give material evidence for the prosecution ;

You are hereby summoned to appear before this Court on the day of _____ next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of _____ 18____

(Seal). _____ (Signature).

XXXII.—Precept to District Magistrate to summon Jurors and Assessors.

(See section 326.)

To the District Magistrate of _____

WHEREAS a Criminal Session is appointed, to be held in the Court-house at _____ on the _____ day of _____ next, and the names of the persons herein stated have been duly drawn by _____ to summon the said Jurors and Assessors to appear at _____ to A.M. on the said _____ done so in pursuance of _____

(Here enter the names of Jurors and Assessors.)

Given under my hand and the seal of the Court, this day of _____ 18____

(Seal). _____ (Signature).

XXXIII.—Summons to Assessor or Juror.

(See section 328.)

To (name) of (place). _____

PURSUANT to a precept directed to me by the Court of Sessions of _____ requiring your attendance as an Assessor (or a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (place) at ten o'clock in the forenoon on the day of _____ next.

Given under my hand and the seal of office, this day of _____ 18____

(Seal). _____ (Signature).

XXXIV.—Warrant of Commitment under Sentence of Death.

(See section 374).

To the Superintendent (or Keeper) of the Jail at

WHEREAS at the Session held before me on the _____ day of _____ 18____, (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. _____ of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section _____ of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of _____;

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this _____ day of _____ 18____.

(Seal).

(Signature).

XXXV.—Warrant of Execution on a Sentence of Death.

(See section 381).

To the Superintendent (or Keeper) of the Jail at

WHEREAS (*name of prisoner*) the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. _____ of the Calendar at the Session held before me on the _____ day of _____, 18____, has been by warrant of this Court, dated the _____ day of _____, committed to your custody under sentence of death; and whereas the order of the _____ Court of confirming the said sentence has been received by this Court;

This is to authorize and require you, the said Superintendent (or Keeper) to carry the said sentence into execution by causing the said _____ to be hanged by the neck until he be dead at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this _____ day of _____ 18____.

(Seal).

XXXVI.—Warrant after a Commutation of a Sentence.

(See sections 381 and 382).

To the Superintendent (or Keeper) of the Jail at

WHEREAS at a Session held on the day of 18
 (name of prisoner), the (1st, 2nd, 3rd, as the case may be) prisoner
 in case No. of the Calender at the said Session, was
 convicted of the offence of punishable under section
 of the Indian Penal Code, and sentenced to and was
 thereupon committed to your custody; and whereas by the order of
 the Court of (a duplicate of which is hereunto
 annexed) the punishment adjudged by the said sentence has been
 commuted to the punishment of transportation for life (or as the case
 may be)

This is to authorize and require you, (the said Superintendent or
 Keeper), safely to keep the said (prisoner's name) in your custody in
 the said Jail as by law is required, until he shall be delivered over by
 you to the proper authority and custody for the purpose of his under-
 going the punishment of transportation under the said order, or if the
 mitigated sentence is one of imprisonment, say, after the words, custody
 in the said Jail, "and there to carry into execution the punishment of
 imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this
 day of 18

(Seal). (Signature).

XXXVII.—Warrant to levy a fine by [Attachment] and Sale.

(See section 386 [(1) (a)].)

To (name and designation of the Police officer or other person or
 persons who is or are to execute the warrant,

and description of the offender) was on the
 (mention
 fine, has

This is to authorize and require you to [attach any] moveable
 property belonging to the said (name) which may be found within

* This word substituted for the word "Distress" by s. 162 of the
 Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

* The figure, letter and brackets were inserted by *ibid.*

* These words were substituted for the words "make distress by
 seizure of any" by *ibid.*

the district of _____; and if within (state the number of days or hours allowed) next after * [such attachment] the said sum shall not be paid (or forthwith) to sell the moveable * [property attached], or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution

Given under my hand and the seal of the Court, this _____ day of _____ 18 _____.

(Seal).

(Signature).

* (XXXVIIA.—Bond for appearance of offender released pending realisation of fine.

~5)

(See sec. 388).

WHEREAS I, (name), inhabitant of (place), have been sentenced to pay a fine of rupees _____ and in default of payment thereof to undergo imprisonment for _____, and whereas the Court has been pleased to order my release * on condition of my executing a bond or my appearance * [on the following date (or dates) namely :—] ;

I hereby bind myself to appear before the Court of _____ at O'Clock * [on the following date (or dates) namely :—] and in case of making default therein, I bind myself to forfeit to His Majesty the King Emperor of India, the sum of Rupees _____

Dated this _____ day of _____ 19 _____.

(Signature)

Where a bond with sureties is to be executed, add—

We do hereby declare ourselves sureties for the above-named _____ that he will appear before the Court of _____ [on the following date (or dates) namely :—] and, in case of his making default therein, we bind ourselves jointly and severally to forfeit to His Majesty the King, Emperor of India, the sum of Rupees _____

(Signature.)

* These words were substituted for the words "such distress" by *ibid.*

* These words were substituted for the words "property distrained" by *ibid.*

* Form XXXVIIA was inserted by *ibid.*

* The words "until the _____ day of _____" were omitted by s. 5 of the Code of Criminal Procedure (Second Amendment) Act, 1923 (XXXVII of 1923).

* These words were substituted for the words "on that _____ day of _____ next" and "on the _____ next" by *ibid.*

XXXVIII.—Warrant of Commitment in certain cases of Contempt
when a Fine is imposed.

(See section 480.)

To the Superintendent (or Keeper) of the Jail at _____

WHEREAS at a Court holden before me on this day (name and description of the offender) in the presence (or view) of the Court committed willful contempt;

And whereas for such contempt the said (name of offender) has been adjudged by the Court to pay a fine of rupees _____, or in default to suffer simple imprisonment for the space of (state the number of months or days);

_____ (Signature of the Superintendent (or Keeper))

Given under my hand and the seal of the Court, this
day of _____ 18 _____

(Seal). _____ (Signature).

XXIX.—Magistrate's or Judge's Warrant of Commitment of
Witness refusing to answer.

(See section 485.)

To (name and description of officer of Court), _____

_____ before me

_____ in

_____ cer

_____ re

_____ con

_____ tion

adjudged).

This is to authorize and require you to take the said (name) into custody and him safely to keep in your custody for the space of _____ days

_____ and to answer

_____ with

_____ least

_____ certifi

Given under my hand and the seal of the Court, this
day of _____ 18 _____

(Seal). _____ (Signature).

XL.—Warrant of Imprisonment on Failure to pay Maintenance.

(See section 485).

To the Superior Court of the County of _____
 WHEREAS _____
 to be possessed _____

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody in the said Jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant, with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day _____
 of _____ 18____

(Seal).

(Signature).

XLI.—Warrant to enforce the payment of Maintenance by [Attachment] and Sale.

(See section 485).

To (name and designation of the Police officer or other person to execute the warrant).

for the month (or months) of _____

This is to authorize and require you to [attach any] moveable property belonging to the said (name) which may be found within the district of _____ and if within (state _____)

* This word was substituted for the word "distress" by s. 102 Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of _____)

* These words were substituted for the words "such".

number of days or hours allowed) next after [such attachment] the said

Given under my hand and the seal of the Court, this 18 day of [Month] 18 [Year] (Seal). (Signature).

XLII.—Bond and bail-bond on a Preliminary Inquiry Before a Magistrate.

(See sections 496 and 499).

I, the undersigned, being a Magistrate of (as the Court of Sessions of the said Magistrate) and required of the said Magistrate to be, and answer the charge against me; and, in case of my making default hereon, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees.

Dated this 18 day of [Month] 18 [Year] (Signature).

I hereby declare myself (or We jointly and severally declare ourselves and each of us) surety (or sureties) for the said (name) that he shall attend at the Court of [Magistrate] on every day of the preliminary inquiry, to be, and answer the charge against me; and, in case of my making default hereon, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees.

Dated this 18 day of [Month] 18 [Year] (Signature).

Vide foot note at p. 590.

* These words were substituted for the words "property distrained" by Act.

of by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day
of 18 .

(Seal.)

(Signature)

XLVIII.—Warrant of Commitment of the Surety of an Accused Person admitted to Bail.

(See section 514).

To the superintendent (or Keeper) of the Civil Jail at .

This is to authorize and require you, the said Superintendent (or Keeper), to receive the said (name) into your custody with this warrant and him safely to keep in the said Jail for the said (term of imprisonment) and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day
of 18 .

(Seal).

(Signature).

XLIX.—Notice to the Principal of Forfeiture of a Bond to keep the Peace.

(See section 514.)

To (name, description and address).

WHEREAS on the day of 18 , you entered into a bond not to commit etc. (as in the bond), and proof of the forfeiture of the same has been given before me and duly recorded; .

Court on the _____ day of _____ and bound yourself in default thereof to forfeit the sum of rupees _____ to Her Majesty the Queen, Empress of India; and whereas the said (name) has failed to appear before this Court and by reason of such default you have forfeited the aforesaid sum of rupees _____

You are hereby required to pay the said penalty or show cause within _____ days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this _____ day of _____ 18 _____

(Seal).

(Signature)

XLVI.—Notice to Surety of Forfeiture of Bond for Good Behaviour.

(See section 514).

To _____ of _____
 WHEREAS on the _____ day of _____ 18 _____ you became surety by a bond for (name) of place that he would be of good behaviour for the period of _____ and bound yourself in default thereof to forfeit the sum of rupees _____ to her Majesty the Queen, Empress of India; and whereas the said (name) has been convicted of the offence of (mention the offence concisely) committed since you became such surety, whereby your security bond has become forfeited;

You are hereby required to pay the said penalty of rupees _____ or to show cause within _____ days why it should not be paid.

Given under my hand and the seal of the Court, this _____ day of _____ 18 _____

(Seal).

(Signature).

XLVII.—Warrant of Attachment against a Surety.

(See section 514).

To _____ of _____
 WHEREAS (name, description and address) has bound himself as surety for the appearance of (mention the condition of the bond), and the said (name) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees _____ (the penalty in the bond);

This is to authorize and require you to attach any moveable property of the said (name) which you may find within the district

sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment);

This is to authorize and require you, the said Superintendent (or Keeper) of the said Civil Jail, to receive the said (name) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this
day of 18

(Seal)

(Signature).

LII.—Warrant of Attachment and sale on Forfeiture of Bond for Good Behaviour.

(See section 514).

To the Police-officer in charge of the Police-station at

WHEREAS (name, description and address) did, on the
day of

This is to authorize and require you to attach by seizure moveable property belonging to the said (name) to the value of rupees

Given under my hand and the seal of the Court, this
of 18

day

(Seal.)

(Signature)

Y^{ou} are hereby called upon to pay the said penalty of rupees _____ or to show cause before me within _____ days why payment of the same should not be enforced against you.

Dated this _____ day of _____ 18____.

(Seal.)

(Signature.)

L.—Warrant to attach the Property of the Principal on Breach of a Bond to keep the Peace.

(See section 514.)

To (name, and designation of Police officer), at the Police-station of _____

WHEREAS (name and description) did on the _____ day of _____ 18____, enter into a bond for the sum of rupees _____ binding himself not to commit a breach of the peace, etc., (as in the bond) and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (name) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

I This is to authorize and require you to attach by seizure moveable property belonging to the said _____ the value of rupees _____ and to sell the same in public auction and to pay the sum of rupees _____ into the Treasury of the Government of _____ upon its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 18____.

(Seal.)

(Signature.)

LI.—Warrant of Imprisonment on Breach of a Bond to keep the Peace.

(See section 514.)

To the Superintendent (or Keeper) of the Civil Jail at _____

WHEREAS proof has been given before me and duly recorded that (name and description) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees _____; and whereas the said (name) has failed to pay the said

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LIII.—Warrant of Imprisonment on Forfeiture of Bond for Good Behaviour.

(See section 514).

To the Superintendent (or Keeper) of the Civil Jail at

WHEREAS (name description and address) did, on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (name etc.; of the principal), and proof of the breach of the said bond has been given before me and (name) has forfeited to Her Majesty rupees said sum or to show cause why though duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (name) in the Civil Jail for the period of (term of imprisonment);

This is to authorize and require you, the Superintendent (or Keeper) to receive the said (name) into your custody, together with this Warrant, and him safely to keep in the said Jail for the said period of (term of imprisonment), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of

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(Seal).

(Signature).

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When witness may use copy of document to refresh memory.
160. Testimony to facts stated in document mentioned in section 159.
161. Right of adverse party as to writing used to refresh memory.
162. Production of documents.
Translation of documents.
163. Giving, as evidence, of document called for and produced on notice.
164. Using, as evidence, of document production of which was refused on notice.

SECTIONS.

165. Judge's power to put questions or order production.
166. Power of jury or assessors to put questions.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

167. No new trial for improper admission or rejection of evidence.

SCHEDULE.—ENACTMENTS REPEALED.

THE INDIAN EVIDENCE ACT, 1872.

ACT NO. I OF 1872.

[15th March, 1872.]

Preamble.

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted by follows:—

Scope of the Act.—This Act does not contain the whole law of evidence governing this country. Section 2 of the Act saves rules of evidence contained in any Statute, Act or Regulation in force. *In Re Radolph Stallman*, 15 C. W. N. 1053—39 C. 164—14 C. L. J. 375.

Lex Fori.—"The law of evidence is the *lex fori* which governs the Courts. Whether a witness is competent or not; whether a certain matter requires to be proved by writing or not; whether certain evidence proves a certain fact or not; that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced, and where the Court sits to enforce it." *Per Lord Brougham Bain v. Whitehaven and Funness Junction Railway Company*, 3 C. L.

Law. 10 B. 439.

History of the Law of Evidence.—Reasoning, the rational
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d law, the
issue of right, in a writ of right, including all elements of law and fact,
was 'tried' by this physical struggle, and the Judges of the Common
Pleas act, like the referee at a prize-fight, simply to administer the
in Criminal
deal of treason
nts it in the
his own case
by undergoing the given requirement as to hot iron, or water, or the
crumb. So of the oath; the question, both law and fact, was 'tried'
merely by the oath, with or without fellow swearers. The old 'trial by
witness' was a testing of the question in like manner by their mere oath.
So a record was said to 'try' itself. And so when out of the midst of
these methods first came the trial by jury, it was the jury's oath, or rather
their verdict, that tried the case. How this method of trial came to
ures and become
nal procedure, is a
e use the phrase
rtainment of facts,
What was formerly
of form is now
Evidence. Mr.
law of evidence into
d is from the primitive
thence to the seven-
teenth, thence to 1790 A. D., thence to 1830, and thence to the present
time. As regards development during the first period no reliable data
are available—though certain rules can be traced up to that earliest time.
The next three centuries marked the establishment of the trial by jury
and the separation of the process of pleading and procedure from that of
proof. Between 1500 A. D., and 1700 A. D., the foundation of the

present system was laid. During that period we find the regulation of the competency of witnesses, the rules for communications, the rules for attesting witnesses, the privilege against self-incrimination, and the enactments of the Statute of 1872. In the ninety years, saw the final establishment of cross examination by counsel, the rule for the impeachment and corroboration of witness, the "best evidence" doctrine, and the publication of the first treatise on the law of evidence, by chief *Baron Gilbert*. The next forty years (1790-1830) saw a tremendous increase of the rulings upon evidence, there being more than in the preceding two centuries. The thirty years ending with 1860 will ever be associated with the names of *Bentham*, *Broughham* and *Denham*—*Bur Jones*, 6. In 1872, the Indian Evidence Act was enacted which is based on English law.

Origin of the Law of Evidence.—In the submission of the facts to the jury, there have been embarrassments, in the development of a set of facts in Court as evidence, the embarrassments referred to in the law, mainly to the jury—wherein it differs from all other elements in the work of the Court, in the eyes of the Judge,

When the jury existed merely as a body of witnesses, supposedly familiar with the facts, who from their own knowledge stated what the fact were (*Bashell's case*, *Vanghan*, 135, 142, 147, 149) the Court could in the application of the law to the facts, exercise a control over the result which was impossible when the character of the jury changed. With the development of the jury into a reasoning, inference-drawing body of men, possessing the power to determine the ultimate facts in issue, and by their verdict to judicially settle the controversy, the situation, to the mind of the Judge, was full of embarrassments. To what conclusions might not these men come; men ignorant of the law and its methods, unfamiliar with the ways of counsel, open to the influence of testimony and arguments presented solely for the purpose of playing upon their sympathy, passion and prejudice. This was a situation to be deplored, and to be relieved of its danger as far as possible.

Accordingly, with the beginning of the use of evidence before juries, we find the beginnings of the law of evidence. Statements to which the Courts might listen with impunity were carefully kept from the jury by excluding rules, established by the Judges.

It must not be supposed that these excluding rules came into existence all at once. The development of the jury into the

was a gradual one; and the growth of rules governing the use of
 knowledge of the witness
 Thus hearsay and opinion
 susceptibility of the jury
 into its modern form.

The supposed ignorance of the average jury was also an important factor in the evolution of the rules of evidence. Things likely to complicate the case, to confirm the mind, or mislead as to the real facts in issue were accordingly excluded.

With the expansion of the work of the Courts and the ever increasing volume of business brought before them, a necessity arose for shortening of trials and the expediting of the work in every possible way. This

a meager result in the way of inference compelling proof when finished.

Other things operated to make it easy and natural for the Courts to establish rules relating to the use of evidence. The policy of the law in respect to persons charged with wrongs which ex-
 out out from the
 acter or habit;
 iter would be
 infer the truth

We may thus get some idea of the elements which have for centuries been at work moulding forms into which matters of evidence for judicial tribunals must be cast, building barriers within which they must be confined, and wearing grooves along which the wheels of judicial enquiry must run. *McKelvey's Law of Evidence* p. 9, 10.

PART I.

Relevancy of Facts.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Indian Evidence Act, 1872.

Extent.

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-martial, "other than Courts martial convened under the Army Act" [or Air Force Act]* but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator ;

Commencement of Act.

and it shall come into force on the first day of September, 1873.

Legislative changes.—The words within quotations have been added by Act 18 of 1919.

Application.—It extends to the whole of British India. For definition of the term of British India vide Act X 1897 s. 7. It has been declared in force in the Santhal Perganas by Reg. 3 of 1873 s. 3 as by Reg. 3 of " 4 ; in the hill tracts, as in the Chin t Shan States tan (with a

Judicial proceedings.—"An enquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons; or between him and the community generally; but even a Judge acting without such an object in view is not acting judicially" 12 B. 36; See also 15 M. 138.

Court.—For definition of the term vide s. 3.

Affidavits.—A declaration in the shape of affidavits cannot be received as evidence of the facts stated in it. 14 C. 653. In England discretionary powers are vested in the Court: (i) to order

* Added by Act X of 1927.

facts or facts to be proved by affidavit. . . .
 witness to be read at a hearing or . . .
 reasonable, with this proviso, th . . .
 desires to cross-examine a witness, . . . the witness can be produced, such
 witness's evidence shall not be allowed to be given by affidavit." *Powell*,
 695.

Courts Martial.—The rules of evidence as contained in this Act do not apply to Courts-martial held either under 38 Vic. c. 7 or under 44 & 45 Vic. c. 58. Courts-Martial must adopt the same rules of evidence as those followed in the Courts of ordinary criminal jurisdiction in England (*Powell*, 28).

Arbitrator.—Vide 11 M. 85, 1 W. R. 12; but see 4 C. 231.

Repeal of enactments. 2. On and from that day the following laws shall be repealed:—

- (1) all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;
- (2) all such rules, laws and regulations as have acquired the force of law under the 25th section of the Indian Councils Act, 1861, in so far as they relate to any matter herein provided for; and
- (3) the enactments mentioned in the schedule hereto to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Scope.—This section repeals all rules of evidence not contained in any Statute or Regulation. Thus the English common law on the subject of evidence is repealed. 7 I. A. 70—5 C. 754. The Hindu and Mahomedan law of evidence is also repealed. 76 P. R. 1891. But this Act does not contain the whole law of evidence. 39 C. 164. See also 7 A. 385; A. 531; 1 A. 297; 11 A. 433; 10 A. 289.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—
 "Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence
 "Fact," . . . "Fact" means and includes—

- (1) any thing, state of things, nr relation of things, capable of being perceived by the senses ;
 (2) any mental condition of which any person is conscious.

Illustrations.

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
 (b) That a man heard or saw something, is a fact.
 (c) That a man said certain words, is a fact.
 (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
 (e) That a man has a certain reputation, is a fact.

One fact is said to be relevant to another when the one
 "Relevant" is connected with the other in any of the
 ways referred to in the provisions of this
 Act relating to the relevancy of facts.

"Facts in issue," The expression "facts in issue" means
 and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,* any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B

At his trial the following facts may be in issue:—

- that A caused B's death;
 that A intended to cause B's death;
 that A had received grave and sudden provocation from B;

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

* See now Act 5 of 1908.

" Document " means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter.

Illustrations.

A writing is a document.

Words printed, lithographed or photographed are documents :

A map or plan is a document :

An inscription on a metal plate or stone is document

A caricature is a document.

" Evidence." " Evidence," means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry :

Such statements are called oral evidence ;

- (2) all documents produced for the inspection of the Court : such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

" Not proved " A fact is said not to be proved when it is neither proved nor disproved.

Court.—The definition of " Court " is framed only for the purposes of this Act. It includes the scope of the Act. 70 (F. B). p 10-22.

Fact.— "Ordinarily, a fact is something done or which has come to pass, an act or deed or event, an effect produced or a result achieved; anything regarded as strictly true or actually existent, whether material or mental, reality, actuality. In legal use it includes the fact that any mental condition of which any person is conscious exists. The legal fact is in any way the basis of legal proceedings, fancies of the law are not conceived of as legal facts. The legal fact is in the process of ratiocination must be proved. The term "evidence" is not applied to the mind, unless it is directly related. That object

Relevant.—"The relevant facts are facts other than *facts in issue* which are in the eye of the law so connected with or related to the facts in issue that they render the latter probable or improbable, or roughly throw light upon them. Relevancy may indeed be considered as a connection with "connection" the subject which is general rule, wider than legal relevancy. A Judge might, in ordinary transactions

Haider Shah, 3 C. W. N. 268 (notes).

Facts in issue.—Facts in issue are those which are alleged by one party and denied by the other on the issue in the indictment and denied by the other party in the case, so far as they are in either case. The difficulty in ascertaining what are

Facts in issue are those facts which are necessary by law to establish claim, liability, or defence, forming the subject matter of the proceedings and which, either by the pleadings or by implication, are in dispute between the parties. Facts in issue are determinable primarily by substantive law, and secondly by the pleadings. *Phil. Ev.* 43.

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ncluding "all mater
represented by writing,
' and expressly incl
he like (*Best, S. 21*,

Wharton defines document as "an instrument on which are recorded, by means of letters, figures, or marks, matters which may be evidential used." (*1 Whart. Ev. S. 614*). Stephen's definition is similar, though more restricted. "Any substance having any matter expressed or d

under the others. *Best. 213*. The definition given in this Act is "than the definition mentioned in Stephen's Digest. This definition seems to include all those things mentioned above.

Profess or Greenleaf: "Evidence in legal acceptation includes all means by which alleged matter of fact, the truth of which is submitted to investigation, is established or disproved" (*1 General. Ev. S. 1*). It includes "all the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation" (*Taylor 1, 1, Powell, 1*). The term "evidence" in its ordinary sense signifies that which makes apparent the truth of a matter in question. It is no doubt more frequently applied to proof before a judicial tribunal, but it is not necessarily confined to this sense; it applies with equal correctness to information, intimation acquired

otherwise than by reasoning or a reference to which is noticed without proof as the basis of inference in ascertaining some other matter of fact." (3 *Harv Law Rev.* 143)

Proved—A fact is said to be proved, when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man might, under the circumstances, believe it to exist. The doubt, which the Court must entertain, is not the doubt, which a prudent man might entertain, in order to bring prosecution to bring guilt home to the accused, to the satisfaction of the minds of the jury, but the doubt, to the benefit of which the accused is entitled, must be such as a rational, thinking, sensible man may fairly and reasonably entertain, not the doubt, of a vacillating mind, that has not the moral courage to decide, "but shelters in a vain and idle scepticism." There must be doubts which a man may honestly and conscientiously entertain. 3 L. B. R. 216=4 Cr. L. J. 382. "There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former, a mere preponderance of probability, due regard being had to the burden of proof is a sufficient basis of decision; but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required. The serious consequences of an erroneous condemnation, both to the accused and society, the immeasurably greater evils which flow from it than from an erroneous acquittal have induced the laws of every wise and civilised nation to lay down the principle, though often lost sight of in practice, that the pursuasion of guilt ought to amount to a moral certainty; or as an eminent judge expressed it, 'such a moral certainty' as convinces the minds of the tribunal, as reasonable men, beyond all reasonable doubt. The expression 'moral certainty' is here used in contra-distinction to physical certainty, or certainty properly so called; for the physical possibility of the innocence of any accused person can never be excluded. *Best* § 95. See also, 5 W. R. Cr. 28; 21 W. R. Cr. 13; 4 W. R. Cr. 19; 7 W. R. Cr. 14; 11 W. R. Cr. 20; 11 C. 642; 22 C. 323, 8 C. W. N. 828.

Matters before it.—"It would appear, that the Legislature intentionally refrained from using the word 'evidence' in this definition but used instead the words 'matters before it.' For instance a fact may be orally admitted in court. The admission would not come within the definition of the word evidence as given in this Act but still it is a matter which the court before whom the admission was made would have to take into consideration in order to determine whether the particular fact was proved, or not." *Per Mitter J.* in C. 363=12 C. L. R. 490. Therefore in determining what is

other than "evidence" in the phraseology of the Act, the definition of "evidence" must be read with that of "proved." Thus though the result of the enquiry instituted by the Munsif is not evidence according to the definition in the Evidence Act, it is a matter before the Court, which the Court can take into consideration *Ibid.* But a judge without giving evidence can not impart his own knowledge into a case. 31 A. 286, 11 M. L. A. 213; 22 W. R. 9; 24 W. R. 81; 24 W. R. Cr. 28.

Distinction between proof and evidence.—The word evidence in legal acceptance, includes all the means by which any alleged matter of fact the truth of which is submitted to investigation established or disproved. This term, and the word proof, are often used indifferently, as synonymous with each other; but the latter is applied by the most accurate logicians to the effect of evidence, and not to the medium by which truth is established. None but mathematical truth is susceptible of that high degree of evidence, called demonstration which excludes all possibility of error, and which, therefore, may reasonably be required in support of every mathematical deduction. Matters of fact are proved by moral evidence alone; by which is meant not only that kind of evidence which is employed on subjects connected with moral conduct, but all the evidence which is not obtained either from intention or from demonstration. In the ordinary affairs of life, we do not require demonstrative evidence, because it is not inconsistent with the nature of the subject and to insist upon it would be unreasonable and absurd. The most that can be affirmed of such things is, that there is no reasonable doubt concerning them. The true question, therefore, in trials of facts, is not whether it is possible that the testimony may be false, but whether there is sufficient possibility of its truth; that is whether the facts are shown by competent and satisfactory evidence. Things established by competent and satisfactory evidence are said to be proved.—*Greenleaf on the Law of Evidence* p. 4.

"May presume."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it;

Whenever it is directed by this Act that the Court shall "Shall presume," presume a fact, it shall regard such fact as proved unless and until it is disproved

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Presumption.—"A presumption is an inference as to a matter of fact which a Judge draws, or directs a jury to draw, as a matter of law."—*Powell*, 387 "Presumptions are aids to reasoning and argumentation, which assume the truth of certain matters for the purpose of some enquiry. They may be grounded on general experience, or probability of any kind; or merely on policy and convenience. On whatever basis they rest, they operate in advance of argument or evidence or irrespective of it, by taking something for granted; by assuming its existence, when the term is legitimately applied it designates a rule or a proposition which still leaves open to further inquiry the matter thus assumed. The exact scope and operation of those *prima facie* assumptions is not easy to state, but they are not to be taken as the mere suggestion of a point to which argument or result of both simply so many inquiry and argument." *Thayer Cas.* 38.

Division of presumption.—English text writers divide presumptions into three classes.—(1) Presumption of fact (2) Rebuttable presumption of law and (3) Irrebuttable presumption of law.

Shall presume.—A presumption of law must be distinguished from *prima facie* evidence of fact. The latter no doubt seems to shift the burden of proof. A presumption of law can also be rebutted. But will it?

Conclusive presumption.—A presumption of law which cannot be rebutted is called a conclusive presumption. It is a proposition of law which does not commit a person to a crime.

Origin of the Rules.—These rules it is likely, all had their beginning in logical inference, however independent of it they may have become in their final shape. Now, the basis of inference is experience. The

and the Jury go into Court with the experience of ordinary human beings and, in the process of drawing inferences, constantly call upon such experience. Coupled with the facts introduced as evidence at the trial it forms the basis of the inferences necessary to arrive at a determination of the facts in issue. It happens that in the almost innumerable cases that are tried, certain facts or groups of facts have been repeatedly presented

inference was therefore made a basis of a vast number of such rules which

CHAPTER II.

OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are herein-after declared to be relevant, and of no others.

This section shall not enable any person to give evidence in any proceeding.

Illustrations.

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue —

- A's beating B with the club,
- A's causing B's death by such beating ;
- A's intention to cause B's death.

(1) A witness does not bring with him and have in readiness for production

to be proved. The first and the second of these classes clearly do not involve the law of evidence. The third class is concerned with judicial admissions and their congeners; such are really equivalent to a pleading, because they formally waive proof; they are therefore no part of the law of evidence, except for the necessity of distinguishing them

section.

petent, may be excluded on the ground of its unimportance, when compared with an abundance of better evidence easily available, on the ground that it has so slight or remote a bearing on the case, either in point of time or value, that it would be unjust unreasonable to prolong and complicate a trial by its introduction on the ground of public policy. (*Bur Jones* § 135). In this

Illustrations.

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Queen by taking part in an insurrection. Any fact which shows that persons are attacked, or that A or B or the by-standers are relevant, or that A or B or the by-standers have not been

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Scope.—All facts which are parts of the same transaction are relevant to each other, so that if one of such facts is in issue, the others are relevant.

transaction, then each of such facts is relevant to the others, so that if any of them be in issue the others are admissible as relevant facts. The real and very substantial difficulty is to determine the limits of the transaction, and what facts are really part of it. (*Cockle, Cas. 64*). Principles of the sections relating to relevancy of facts are 'mere rules of logic. (1914) M. W. N. 931.

Proof of the charge.—The charge is proved by the evidence of the witnesses.

(*res gesta*). So long as these circumstances do not consist of declarations and statements, they are introduced as a matter of course, proved by either side without question, unless, indeed, they got too far away from the main fact, when, under rules having no relation to the subject of which they are excluded. It is when they comprise statements, answers to questions, and other verbal utterances by the

the act or event, that they occupy the attention of the Courts. If it has been possible to treat verbal utterances made under such condition

utterances of the mind under circumstances and at times where there has been no sufficient opportunity to plan false or misleading statements they exhibit the mind's impressions of immediate events, and are no narration of past happenings; they are uttered while the mind is under

and coincident with the event. Taken altogether, it is perhaps safe to say that in the case of no exception to the hearsay rule is there as little danger and as much assistance to the cause of justice as in this, taking into consideration the manner in which it has been applied—*McKelvey's Evidence* pp. 343—345.

Transaction.—A transaction is a group of facts connected together as to be referred to by a single legal name, as a crime, contract, a wrong or any other subject of inquiry which may be in issue. Every fact which is part of the same transaction as the facts in issue is deemed to be relevant to the facts in issue, although it may not be actually in issue, and although if it were not part of the same transaction it might be excluded as hearsay. Whether any particular fact is or is not part of the same transaction as the facts in issue is a question of law upon which no principle has been stated by authority and on which single judges have given different decisions. (*Stephen's Digest* art. 3). 'See also 11 C. W. N. 266' Acts are not parts of the same transaction, unless they were done substantially at the same time, although they are similar in other respects (*R. v. Birdseye*, 4 C. and P. 386). A transaction may be a continuous one extending over a

physical acts and the words accompanying such physical acts, whether spoken by the person doing such acts, the person to whom they were done or any other persons present. Such words are admissible in evidence as part of the transaction. (*Thompson v. Trevanion*, *Skinner*, 402 cited in

Cockle Cas. 65). See also 34 P. R. 1914 Cr.=27 Ind. Cas 664=16 Cr. L. J. 184.

Verbal Acts or Verbal Parts of an Act.—There are other declarations which are admitted as original evidence, being distinguished from hearsay by their connection with the principal fact under investigation. The affairs of men consist of a complication of circumstances so intimately interwoven as to be hardly separable from each other. Each owes its birth to some preceding circumstances so intimately interwoven as to be hardly separable from each other. Each owes its birth to some preceding circumstances, and, in its turn, become the prolific parents of others; and each during its existence, has its inseparable attributes, and its kindred facts, materially affecting its character, and essential to be known in order to a right understanding of its nature. These surround-

the exercise of the Court's sound discretion, it being extremely difficult, if not impossible, to bring this class of cases within the limits of a more particular description. The principle points for considerations are, whether the circumstances and declarations offered in proof were contemporaneous with the main fact under consideration, and whether they are so connected with it as to illustrate its character. *Greenleaf* § 108. Declarations in order to become part of the *res gestæ* "must have been made at the time of the act done which they are supposed to characterize and have been well c facts they were int obviously to constitut *Tuttle*, 3 Conn 250.

and declarations during the tenancy by a man that he is a tenant and of a particular person may be put as a part of *res gestæ*." *Rankin v. Trainbrook*, 6 Watts, 390.

Declarations.—A statement, in order to be admissible in evidence as part of the transaction or *res gestæ*, must strictly accompany, or be made at the same time, as the physical acts in question. *R. v. Beding*, 14 Cox. C. C. 341. But in *R. v. Foster*, 6 C and P, a statement followed the physical act, was admitted in evidence as a part transaction, although it was the last item of the transaction. A

afforded an opportunity for their occurrence or transaction, are relevant

Illustrations.

(a) The question is, whether A robbed B.

The facts that shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts

(c) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Scope.—This section admits a very large class of connected facts in addition to those admitted by the last section. Here it should again be observed that the weight to be attached to such facts when

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of connection are (1), as being the occasion or cause of a fact; (2) as being its effect; (3), as giving opportunity for its occurrence; (4) as constituting the state of things under which it happened. They are in truth different aspects of causation. (*Gun., Ev. 91*).

Principle.—"The competency of a co-lateral fact to be used as the

Occasion, Cause and effect.—These are different aspects. If they are parts of the same transaction, they are adm

s. 6. and also under this section. Now the question is what facts not part of evidence. Such facts are either facts are dissimilar they are clearly weight, are rejected as legal evidence on grounds of convenience, since they tend to embarrass the inquiry with co-lateral issues, prejudice the parties with the jury, and encourage attacks without notice. The maxim "*Res inter alios actae alteri nocere non debent*" is frequently supposed to express the principle but this is incorrect, for similar transaction in the relation. The principle as a test of relevancy will show that most of the transactions here is declared relevant are *res inter alios* while others that are irrelevant are *res inter parties*. The maxim has its principal utility in the domain of substantive law. (*Phil. Ev.* 125 126). But where there is some logical connection between the fact offered as evidence and the issuable fact, or where proof of the former tends to make the latter more probable or improbable the testimony proposed is relevant, if not too remote. (*Bur Jones Ev. S.* 138). So the admissibility of similar facts as direct proof of the fact in issue depends, not on personal, but logical privity; and is mainly a question of degree, or of our knowledge and understanding of the causes of events, as to which, in many cases, the progress of science may change the law. In proportion

cause and effect of relevant facts or facts in issue are admissible evidence.

Opportunity.—Opportunity must always be relevant; for no circumstances can be more infirmative of a charge than that the accused had an opportunity of committing the crime. On the strength of this rests the force of a defence founded on *alibi*. But the Judge must be on his guard against admitting evidence of a crime. If the crime is a wide ground, and the commission in which a trespass. No person, and the doors and windows were closed and secure as usual. The prisoner was condemned and executed, chiefly on the presumption that no one else could have had access to the house; but it afterwards appeared, by the confession of one of the real murderers, that they had gained admittance into the house, which was situated in a narrow street, by means of board across the street from an upper window of an opposite house, to an upper window of that in which the deceased lived; and that

having committed the murder, the relevant facts are the traces behind them. (*Norton*) and position of the parties relevant to such conduct. So, question whether a certain act admissible not only in the absence of direct evidence, but also in aid of direct evidence. *Dowling v Dowling*, 10 Irish C. L. R. 236.

Illustrations.—Illustration (a) is an instance of facts relevant as giving occasion or opportunity, (b) of facts constituting an effect; (c) of facts constituting the state of things under which an alleged fact happened. (*Cunningham* 91)

Motive, preparation and previous or subsequent conduct. **8.** Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceedings, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and bearing, which affects such conduct, is relevant.

Illustrations.

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public are relevant.

(b) A sues B upon a bond for the payment of money, B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B is relevant.

(d) The question is whether a certain document is the will of A. The facts that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve are relevant.

(e) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence or prevented the presence or procured the absence of persons who might have been witnesses or suborned persons to give false evidence respecting it are relevant.

(f) The question is whether A robbed B.

The facts that after B was robbed, C said in A's presence—"th police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advice you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as a corroborative evidence under section 157.

Scope.—This section further illustrates the principle laid down in the preceding section. Under certain circumstances collateral facts are admissible when they fall within the definition of this section. The same principle underlies in the admission of these facts. So familiar is the practice of proving, as parts of the chain of evidence the preparation, motive, desire or intention of the party to do the act in question. On the same principle it is relevant to prove misconduct of the party in respect to the pending case, such as attempting to suppress or to fabricate testimony or bribe witnesses or jurors, and so it is relevant to prove the demeanour of a party accused of a crime or tort, his flight or concealment and his falsehoods, his attempt to fasten the crime on others, his possession of property connecting him with the offence, or statements made in his presence likely to affect his conduct. So whenever any act may be proved, statements accompanying and explaining that act made by or to the person doing it may be proved, if they are necessary to understand it. In criminal cases (of rape) the conduct of the person against whom the offence is said to have been committed, and in particular the fact that (she) made a complaint soon after the offence to persons to whom the would naturally complain, are deemed to be relevant; but the terms of the complaint itself seem to be deemed to be irrelevant. When a person's conduct is in issue or is, or is deemed to be, relevant to the issue, statements made in his presence and hearing by which his conduct is likely to have been affected are deemed to be relevant. (*Burr Jones Ev.* § 138).

Motive, Preparation and conduct.—Evidence is admissible not only of the facts in issue, but also of other facts—

whom such motive, preparation or conduct is proved. (*R. v. Palmer*;
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any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know from experience of Criminal Courts that atrocious crimes of this sort have been committed from very slight motives, not merely from malice or revenge, but to gain a small pecuniary advantage, or to drive off for a time passing difficulties."

CASE.—The first information report against the accused is admissible under this section, 44 C. L. J. 253.

Motive.—A motive is that which moves a man to do a particular act. It is that which is in his mind and which moves him to act and whether the belief which produces that state of mind is true or false the motive remains the same and the truth or falsity of the belief is not really in question. 62 Ind. Cas. 545. Intention must not be confounded with motive. Intention shows the nature of the act which the man believes he is doing. Motive is the reason which induces him to do the act which he intends to do and does. Motive is sometimes very important as evidencing a state of mind, which is a material element in the offence charged (*Mayne's Cr. Law* § 9 A.). See also 40 P. R. 1905 Cr. = 148 P. L. R. 1905; 7 Ind. Cas. 38, 91 P. R. 1866 Cr., 7 W. R. 60, 15 W. R. 46; 5 W. R. 28; 1 W. R. 19. In the prove of certain crimes, where motive is an important

make X beneficiary under a policy under which Y had been beneficiary, and then to kill M. Is the evidence admissible? *Allen J.* observed: "In such cases there is a distinct and significant probative effect, resulting from the continuance of the same plan or scheme, and from the doing of other acts in pursuance thereof. It is somewhat of the nature of threats, of declarations of intention, but more especially of the preparations for the

Makin v. Attorney General, (1891) A. C. 57.

Preparation.—Previous attempts to commit an offence are closely allied to preparations for the commission of it, and only differs in being

carried one step further and nearer to the criminal act of which however, like the former, they fall short (*Best's Evidence* 404).

Conduct.—Vide 17 Cr. L. J. 402 ; 22 C. 406 ; 24 W. R. 176 ; 7 A. 385 ; 82 Ind. Cas. 142 ; 52 Ind. Cas. 607=21 Bom. L. R. 724 ; 54 Ind. Cas. 775.

Expl. (2)—Vide 12 Ind. Cas. 87=12 Cr. L. J. 479 ; 7 A. 385 ; *Reg. v. Mallony*, 15 Cox. 456 ; 52 Ind. Cas. 607=20 Cr. L. J. 681=21 Bom. L. R. 724 ; 1924 Nag. 22.

9. Facts necessary to explain or introduce a fact in issue or

Facts necessary to explain
or introduce relevant fact,

relevant fact, or which support or rebut an
inference suggested by a fact in issue or
or relevant fact, or which establish the

identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A ; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Principle.—It would be practically impossible, in the conduct of an action, to plunge direct in *medias res*, and Judge and jury alike seek for some introductory evidence, just as one hearing only the main incident of a story desires to know the circumstances leading up to it and the results that flow from it. Those circumstances in relation to an action or suit may not *per se* be relevant, but in connection with the main issues to be put before the tribunal, they are treated as the introduction to main matters or by way of inducement to it. They take the place of the preamble to a statute, which, while it has no power in itself, combined with the enacting clauses becomes the statute. The variety of these introductory or preliminary proofs, as great in number as the variety of the causes of action, prevents any attempt at classification, but the rule as to their relevancy is abundantly established. In view of these facts the preliminary questions leading to the introduction of relevant fact was held entirely proper. It follows that if introductory testimony, not inherently relevant, is admissible *a fortiori* that should be relevant, which will

wise be hearsay, are examples of the class of evidence referred to *Jones Ev.* § 137 (a) and § 137 (b).

Explanation of facts.—If after the commission of a crime a person, whose name is mentioned as a participator in the crime, absconds, Therefore,

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admissible in the suit. 30 C. W. N 761=97 Ind Cas 265=A. I. R. 1926 Cal. 948

Identity.—It remains to observe on identity in the section, that sometimes evidence, which would be otherwise inadmissible becomes so, either as serving to identify the prisoner, or some article in his possession, as connected with the commission of the crime. Thus, in an indictment for arson, evidence has been admitted to show that a carpet which had been taken out of the house at the time of the fire, was found in the prisoner's possession.

(19) See also 18 A. 78:1 C. W. N 33.9 C. W. N. 520.

10 Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the

Principle.—A rule is well established that, in cases where conspiracy is charged, the admission of one of the accused may become, by reason of the other proof in the case, admissible against the other. By themselves, and without other proof, they are not admissible; but, if proof shows the existence of the conspiracy, statements as to details of the conspiracy, made by one party, become admissible against the other. The effect of this rule may be illustrated by supposing that the fact of the commission of the act which is charged as a crime is difficult to

but the fact of the conspiracy to commit such an act has been sufficient proved. To procure a conviction, it is necessary that proof shall rest to both facts. Suppose now, that the only proof of the former fact consisted of statements in respect to it made by one of the parties. It is clear that since both are shown to have been interested together, and to have set out to commit the act, the statements made by one as to what was done should be received against the other. It must be borne in mind, however, that the fact of the conspiracy is to be proved by evidence entirely outside of the admissions. It is probable that, in all cases of conspiracy where admissions are received, their reception could be explained on the ground that they are a part of the *res gestæ*. — *McKelvey's Law of Evidence* p. 141.

conspirators, while the conspiracy is going on, with reference to the carrying out of the conspiracy. 38 C. 169—15 C. W. N. 25; 28 C. 797. A conspiracy within the terms of this section contemplates something more than the
4 C. W. N. 528
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evidence can be given of the acts of any person not done in the presence of the prisoner. 5 O. C. 321. See also 11 P. W. R. 1915. What has to be established under this section to make documents found in the possession of one of several persons accused of conspiracy admissible against the other accused, is, that there is reasonable ground to believe in the existence of a conspiracy amongst such persons. It is not necessary for this purpose to establish by independent evidence that they were conspirators. 16 C. W. N. 1105, 30 C. 983. See also 25 B. 230; 9 B. L. R. App. 36, 7 B. L. R. 63; 46 C. 700; 25 Bom. L. R. 248; 46 C. 215—23 C. W. N. 193—46 Ind. Cas. 152, 42 C. 957—19 C. W. N. 676—21 C. L. 1. 331..

declarations of the conspirators after such severance. (*Phipson*, 74).

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civil actions the declarations of co-trespassers are subject to the same rule. If they are mere narratives, they are evidence only against the makers; if they form part of the *res gestae* they are evidence against all. This section applies to an "actionable wrong" as well as a criminal offence. (*Norton 123*).

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(a) The question is whether A committed a crime at Calcutta, on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed, either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant:

Scope.—The words of this section are very wide, and under it, all evidence which would be held admissible under English law would be

is to restrict the investigations made by Courts within the bounds prescribed by general convenience, and this object would be completely frustrated by the admission on all occasions, of every circumstance on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and a determination of fresh collateral issues, growing up in endless succession, as the inquiry proceeded. That such an extensive meaning was not in the mind of the legislature, seems to be shown by several indications in the Act itself. The illustrations to this section do not go beyond familiar cases in the English Law of Evidence." *Per West J. in Reg v Parbhoo Das*, 11 B. H. C. R. 90. The former of these observations observed, "The meaning of the section is not to be taken too literally."

reasonable presumption or inference. 6 Bom. L. R. 983. The terms of this section are no doubt wide, but they must be read subject to other sections of the Act, and therefore the fact relied on must be proved in accordance with the provisions of the Act. It is a statement made by a person, the statement cannot be proved by subsequent sections of the Act, see also 9 Bom. L. R. 10.

Highly probable.—"The words highly probable point out that the connection between the facts in issue and the collateral facts sought to be proved must be so mediate as to render the co-existence of the two highly probable." *Per Mitter J. in Empress v. M. J. Vyapaory*, 6 C. 635. See also 16 B. 125; 30 C. 883; 18 Ind. Cas. 997—13 M. L. J. 282.

Cases.—6 Bom. L. R. 983, 5 M. 252, 3 Bom. L. R. 465; 11 C. L. R. 528; 14 C. L. J. 467; 2 C. W. N. 91—25 C. 210; 9 C. W. N. 402; 30 Ind. Cas. 292; 23 C. W. N. 933; 28 C. W. N. 1097; 1925 Pat. 68; 37 M. 238; 13 Ind. Cas. 439; 39 A. 273; A. I. R. 1926 (Cal) 115, 97 Ind. Cas. 694—1 N. L. J. 215; A. I. R. (1926) Cal. 479—91 Ind. Cas. 688; A. I. R. 1926) Cal. 415.

Horoscope.—48 Ind. Cas. 400.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant. In suits for damages, facts tending to enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Notes.—Damages unless expressly admitted are deemed to be fact in issue. Evidence tending to increase or diminish the damage is of course, admissible, though not expressly involved in the issue. Thus, in an action for breach of promise of marriage, plaintiff may give evidence of the defendant's fortune; for it obviously tends to prove the loss sustained by the plaintiff, but not in an action for adultery, *James v. Biddington*, 6 C. and P. 589, nor for seduction, *Hodsoll v. Taylor*, L. R. 9 Q. B. 79; nor for malicious prosecution, for it is nothing to the purpose "that damages are taken from a deep pocket" *Short v. Story*, Winton Sm. As \$835 per *Alderson*, B—Roscoe's N. S. 86. Where the question is as to the amount of compensation for defamation of character, it is plausible argument for that the defendant should be allowed to show how little the plaintiff had to lose. *Scott v. Sampson*, 8 Q. B. D. 491; *Foot v. Tracy*, 1 Johns. 46.

Damages as subject of opinion evidence.—In ordinary cases the Court is to determine the amount of damages *Lincoln v. Railroad Co* 23 Wand (N. Y.) 415. But there are questions of damages, dependent, by some rule of law, upon subsidiary questions of value of property and upon these latter questions persons specially qualified are often called upon for opinions, so that opinions of experts as to values may be given. *See* *the case of the "Hulk"*, 10 C. and P. 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Facts relevant when right or custom is in question. 13. Where the question is as to the existence of any right or custom, the following facts are relevant :—

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence :
- (b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustrations

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or which the exercise of the right was stopped by A's neighbours, are relevant facts.

Right.—The right mentioned in the above section is not a public right only. 23 W. R. 311. see also 6 C. 171 ; 39 C. L. J. 526. In the absence of any qualification such as is found in s. 48, "right and custom" in the section 13 must be understood as comprehending all rights and customs recognised by law, and therefore including a right of ownership. 10 B. 439 ; 31 B. 143, 12 M. 9 ; 15 M. 12 ; 16 M. 191, 12 A. 1. But the majority of Full Bench in *Gujju Lal v. Fateh Lal*, 6 C. 187 (F. B.) held that the word right includes only incorporeal rights. But *Mitler J.* dissented from the views taken by the majority and held that such contention is not warranted by any general principle. See also 2 C. W. N. 501.

Custom.—"Customs" as used in the sense of a rule which in a particular district, class or family has from long usage obtained the force of law must be (a) ancient; (b) continued, unaltered, uninterrupted, uniform, constant; (c) peaceable and acquiesced in; (d) reasonable (e) certain and follow or not, have been al necessity and must not be immoral (1800 *Argo v. 103*).

Transaction.—Where a party sets up a particular right, judgments not *inter partes* in previous cases in which a similar right was asserted are admissible in evidence 60 Ind. Cas. 142, 59 Ind. Cas. 734 ; 40 Ind. Cas. 838 ; 64 Ind. 65 Cas. 465 ; Ind. Cas. 522, 65 Ind. Cas. 525 ; 65 Ind. Cas. 699 ; 65 Ind. Cas. 398, 1 Pat. L. T. 221, 78 Ind. Cas. 895. It is well may be used in evi- a relevant fact, or it cannot be used as N. 643—23 C. L. J. 99 40 C. L. J. 30 A. 10 ; 12 A. 11, 13 C. 352 ; 10 B. J. in *Lakshman v.* this conflict of views

W. N. 826=95 Ind. Cas. 334=43 C. L. J. 327=A. I. R. 1926 Cal. 822 ; see also A. I. R. 1926 Nag. 129, 22 N. L. R. 49=A. I. R. 1926 Nag. 109; 97 Ind. Cas. 853=A. I. R. 1926 Oudh. 573; 92 Ind. Cas. 126; 97 Ind. Cas. 853. A benami transaction is fictitious transaction and is not admissible in evidence as a transaction under this section. 31 C. W. N. 32.

Cases.—33 Ind. Cas. 446, 36 Ind. Cas. 882, 33 Ind. Cas. 142, 19 C. W. N. 1038, 51 Ind. Cas. 866

Map.—49 Ind. Cas. 95; 5 C. 287.

14 Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

* *Explanation 1*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question

* *Explanation 2*.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.†

Illustrations.

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

‡ (b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

* These *Explanations* were substituted for the original *Explanation* to s. 14, by the Indian Evidence Act (1872) Amendment Act, 1891 (3 of 1891, s. 1 (1).

† See the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 311.

‡ This *Illustration* was substituted for the original *Illustration* (b) to s. 14, by Act 3 of 1891, s. 1 (2)

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(c) A sues B for damage done by a dog of B's which B knew to be ferocious

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

payee was a fictitious person.

(c) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A toward B, is relevant to the question of A's intention to harm B.

as showing that A did not intend to harm the reputation of B. and B. and are relevant.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is, whether A's death was caused by poison

Statements made by A during his illness as to his symptoms are relevant facts.

(m) The question is, what was the state of A's health at the time an assurance on his life was effected

Statements made by A as to the state of his health at or near the time in question are relevant facts

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured

The facts that B's attention was drawn on other occasions to the defect of that particular carriage is relevant

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant

(o) A is tried for the murder of B by intentionally shooting him dead

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

or

representing a ring to be a diamond ring, evidence was offered, in order to prove guilty knowledge on X's part that he had, shortly before, offered other false articles to other pawn-brokers. The evidence was admissible. In delivering the judgment *Lord Coleridge* said "It is

Macneil v. S.
128, Cas. 128,
retences, by

show that he was pursuing a course of similar acts, and thereby it raises a presumption, that he was not acting under a mistake. It is not conclusive for a man may be many times under a similar mistake, or may be many times the dupe of another; but it is less likely he should be so oftener than once, and every circumstance which shows he was not under a mistake on any one of these occasions, strengthens the presumption that he was not on the last; and this is amply borne out by the authorities." In *Com v Russel*, 156 Mass. 196 at p. 197 *Barker J.* observed: "The admission of such evidence is necessary, because guilty knowledge is a fact not susceptible of proof by direct evidence, and can rarely be shown by explicit admission, but only by acts and conduct." So, also on a question of malice, evidence of other criminal acts leading up to one in question, which show the state of mind of the accused, is admissible. There is a tendency not to extend the doctrine, but to confine it to cases when there is very clear reason for its application on account of the necessity of showing motive, intent or guilty knowledge. *Reg v. Oddy*, 2 Den, Cr. Cas 264. In that case *Lord Campbell C. J.* said: "I should be very unwilling to apply their principle generally to criminal cases." Where, however, the bodily or mental state is not a material fact in issue, evidence as to such state is inadmissible. *McKelvey's Evidence* p. 192

Scope.—This important section had better be considered by remarks upon the several illustrations seriatim. It consists of a collection of the cases in which the strict rules of evidence are somewhat relaxed by the

of inducing the jury to infer, that because the accused has committed a crime of a similar description on other occasions, he is guilty on the present but to anticipate the defence that he acted innocently, and without any guilty knowledge, or that he had no intention or motive to commit the act. The first four illustrations (a) (b) (c) (d) are on the point of knowledge, the fifth (e), as also (i) and (j), of intention; the sixth (f), as also (g) and (h), of good faith, (k) of feeling, (l), (m) of state of body; (n) of negligence, and also of knowledge, and (n), (o) and (p) illustrate the explanation. (*Norton* 131). When a person is charged with, or alleged to have done, some act involving guilty knowledge or intention, or other state of mind, after proof of the physical act, evidence is admissible of his similar acts on other occasions, but only in order to show such guilty knowledge or intention or state of mind. (*R. v. Geering*, 18 L. M. J. M. C. 215; *Cockle Cas.* 99.) See also *R. v. Rhodes*, L. R. (1899) 1 Q. B. 77, where it was held that such evidence was admissible even when such acts were subsequent to the transaction, in question if they show a connected, or

15. When there is a question whether an act was accidental or intentional, [or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(a) A is accused of burning down his house in order to obtain money for which it is insured.

... of which he
... ch fires A
... as tend-

(b) A is employed to receive money from the vendors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Legislative changes.—The words in the brackets have been inserted by Act 3 of 1891.

Scope.—This section is an application of the general rule laid down in s. 14, and it is not necessary under the section that all the acts should form part of a series of similar occurrences; such acts may be proved. Where the particular transaction is one of a series of similar frauds, evidence of the other frauds is admissible to prove the intention of the accused in the particular case. 36 C. 573=13 C. W. N. 973=9 C. L. J. 610. In a prosecution for theft it cannot be

... for the same
... that
... that
section applies. U. B. R. (1897-1901) Vol. 1, 144. See also 12 C. L. J. 125, 12 C. L. J. 611; 269 P. L. R. 1914; 25 P. W. R. 1910 Cr.; 47 C. 671, 60 Ind. Cas. 331.

Principle.—"In criminal cases the leading principle is that evidence of all matters which are irrelevant to the issue will be excluded. But to this there is exception that evidence will be admitted of any facts which

tend to explain or throw light on the transaction in issue, as for instance, to establish a systematic course of conduct, or to show criminal intention or guilty knowledge in the mind of the accused, or to rebut the defence that the criminal act was done accidentally or undesignedly"—*Powell* 128. This section is applicable where the only question is whether an untruthful statement is accidental or intentional or with particular knowledge or intention. 15 A L J. 241

Passing bad coins—In cases of passing bad coins previous offence is relevant *R. v Jarves*, 7 Con 53.

Arson—In cases of arson, evidence may be given of previous fires that the prisoner had experienced in his premises *R v Gray*, 4 F. & F, 1102.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

Illustrations

(a) The question is, whether a particular letter was despatched

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

Scope—There is no presumption that the course of business in a

infer that A had received it in the ordinary course of postal business. *Stocken v. Collins*, 7 M. and W. 515, 14 Ward v. Lord Londesborough, 12 C. B. 252. There is a presumption that public and official acts and duties have been regularly and properly performed. *Berryman v. Wise*, 4 T. R. 366.

Course of Business.—It means the ordinary course of a professional avocation or mercantile transaction or trade or business. 23 B. 63.

Registered letter.—Where a registered letter is posted to a firm's correct address but is returned with the word 'refused' endorsed upon it, the presumption under this section in favour of the existence of common course of business is that the letter reached the place of firm's business and it may also be presumed that it was refused by an agent or partner of the firm. 50 Ind. Cas. 149, see also 15 C. 681, 9 A. 366.

ADMISSIONS.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission.—An Admission is "a statement oral or written, suggesting any inference as to any fact in issue or relevant or deemed to be relevant to any such fact, made by or on behalf of any party to any proceedings" (*Reynold's Step. Ev.* art. 15.) Admissions have been subdivided into direct and indirect, express, implied, incidental judicial and extra-judicial, and the names of some of them sufficiently indicate the description. Direct and implied admissions are acts. The term "incidental" is used in connection with the latter.

may amount to an admission, statement, (*Bessela v. Stern*, L. R. 2 C. P. (D. 265). A vague admission is no admission 21 A. L. J. 869.

The definition of admission in English law is confined to the Evidence Act and is applicable in relation to the law of England.

Cases.—106 P. R. 1915, 28 M. L. J. 92; 36 C. L. J. 186; 65 Ind. Cas. 345; 65 Ind. Cas. 398; 65 Ind. Cas. 368; 26 C. W. N. 273; 22 C. W. N. 530; 1924 Nag. 387.

18. Statements made by a party to the proceeding, or by an Admissions by party to proceeding or his agent : Court of the authorized by him to make them, are admissions.

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless by suitor in representative character ; they were made while the party making them held that character.

Statements made by—
 (1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who makes the statement in their character of persons so interested ; or
 by party interested in subject-matter ;
 (2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,
 by person from whom interest derived.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Scope.—Let us confine ourselves to civil admissions for the present. The persons by whom admissions may be made are the parties to the suit or their agents, or those identified in interest with them ; or the persons *sub modo* in (1) and (2). If they proceed from a stranger they are generally inadmissible ; unless he be dead, as to which see section 32 *post*. An admission made by an infant after he arrives at age will bind him. No distinction should be drawn between the *nominal* and *real* parties to a suit. *Example*—A should deal directly with instance consignees suing in the admission of s insiders (Norton Ev. 143). ejected.

Cases.—A statement made by defendant in another suit may be used as an admission within the meaning of this section 22 W. R. 303. An admission against her own interest by the predecessor-in-title of the defendant is relevant under ss. 18 and 21, though not conclusive, and is sufficient by itself to shift the burden of proof. 7 N. L. R. 23 See also 69 Ind. Cas. 35, 66 Ind. Cas. 15, 9 O. L. J. 262, 46 Ind. Cas. 709.

Parties.—An admission once made is binding against the party making it for all the purposes of the suit, unless it be shown that such admission was recorded erroneously. 2 W. R. Act X. R. 1. An admission made by parties to a previous suit or an arbitration proceedings may be used as evidence against them in subsequent suit. 7 W. R. 249, 9

162, 5 B. L. R. 529, 14 W. R. 28, 13 M. L. A. 438; 17 W. R. 372; 23 W. R. 27; 15 W. R. 437; 27 W. R. 303. Where a person uses the admission of another as evidence, the whole admission must be put in 7 W. R. 29. The admission by defendants in a former suit of a map as correct was held to be legal, though not conclusive evidence against them in a boundary suit. 8 W. R. 291.

Pleador.—A pleader's statement on behalf of his client after full consideration and consultation is relevant evidence against that client in another case to which he is a party. 15 W. R. 35. A barrister (or other advocate) may make any admission on behalf of his client which, in the honest exercise of his judgment, he thinks proper; but he has no authority on matters collateral to the suit (*Swinfen v. Lord Chelmsford*, 29 L. J. Ex, 382).

... .. ents (*Williams v. Innes*, does or says, within the carrying out the business an agent or servant may within the scope of his authority or duty. *Kirstall Brewery Co. v. Furness Ry. Co.* L. R. 9 Q. B. 468; *G. W. Ry. Co. v. Willis*, 34 L. J. C P 195; *Govindji v. Chhota Lal*, 2 Bom. L. R. 651. Statements made by an agent about past transactions will not bind the principal as admissions. When the agent's authority to act in the particular matter has ceased, the principal cannot be affected by his subsequent statements. (*Peto v. Hague*, 5 Esp 134) See also 3 B. L. R. 273, 46 Ind cas 709.

Admission by one of several persons.—Where several persons are interested in the same matter of fact the general rule is that the

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements proved as against party to the suit, would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Cases.—The question at issue was whether a party was the legitimate issue of a person with whom her mother was living after having been previously married to another who, it was alleged, had divorced her. A deposition given by the mother was tendered in evidence, in which she was described at the heading as the wife of her previous husband, but in the body of which she stated she had been living with the alleged father for 10 or 12 years past. Held, that the deposition, even if admissible, was of no weight for the reason that her statement did not amount to an admission that she was living in adultery. 26 A 108 P C.=8 C W. N. 241. Guardians of infants are not competent to bind the infants by their admissions. 29 C. L. J 577. An admission made by a landlord is not binding on the tenant. 52 Ind Cas 739.

Case.—64 Ind Cas 334.

20. Statements made by persons to whom a party to the suit
Admissions by persons has expressly referred for information in expressly referred to by reference to a matter in dispute are admissions

Illustration.

The question is whether a horse sold by A to B is sound. A says to B—"Go and ask C, C knows all about it." C's statement is an admission.

Scope.—Admissions may be made by agents. If one party directs or requests another party to apply to any other persons for information on a certain matter, such reference may constitute such other person as agent in such matters for such purpose. *Williams v. Innes* 10 R. R. 702). Whenever a party refers to the evidence of another, he is bound by it—and this is constantly good evidence. *Daniel v. Pitt*, 1 Camp 366. It matters not whether the question was one of law or fact. *Price v. Hollis*, 1 M. and S 105, *Downe v. Cooper*, 2 Q. B 256. The reference need not be by express words. If the fair consequence of a party's conduct is to refer to another, it will suffice. (*Norton*, 149) A party to a litigation is not bound by the statements of the Muktear of the opposite party who was cross-examined by the parties. 4 U. P. L. R. 9 (Rev). See also 80 Ind Cas. 16=46A. 710 But there must be an express reference. L. R. 2 All 204.

21. Admissions are relevant and may be proved as against
Proof of admissions the persons who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases :—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that if the person making it, were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made, at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged. A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged: but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to shew that the ship was taken out of her proper course

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by fact in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

Why admissions competent.—Whatever a party voluntarily admits to be true, though the admission be contrary to his interest may reasonably be taken for the truth. The same rule, it will be seen, applies to admissions by those who are so identified in situation and interest with a party that their declaration may be considered to have been made by himself. As to such evidence the ordinary test of truth are properly dispensed with, they are inapplicable. An oath is administered to a witness in order to impose an additional obligation on his conscience and so to add weight to his testimony, and he is cross-examined to ascertain his means of knowledge, as well as his intention to speak the truth. But where a man voluntarily admits a debt or confesses a crime, there is little occasion for confirmation; the ordinary motives of human conduct are sufficient warrants for belief. *Southern Ins Co. v. White*, 58. Ark 277. In English law such admissions are admissible as one of the exceptions to the hearsay evidence. Strictly speaking they are open to but few of the objections which may be urged against hearsay testimony. Admission made by a party is of considerable weight as evidence against him, and may, if unexplained be even decisive. 51 Ind Cas. 876, 13 C. W. N. 409; 7 Ind. Cas 595.

Cases.—68 Ind Cas 566, 4 Lah L J 437, 45 Ind Cas. 843, 22 C. 909, 1924 Nag 291. 17 Ind Cas 961, 54 Ind. Cas 478.

22. Oral admissions as to the contents of a document are not

<p>When oral admissions as to contents of documents are relevant.</p>	<p>relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.</p>
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and in *Lawless v. Queale*, 8 Ir L R 382 but in England it has survived those attacks (*Powell Ev.* 444). But their Lordships of the Judicial Committee of the Privy Council in 10 I. A. 79 observed: "They consider that it is a very dangerous thing to rest a judgment upon "

admissions of a sum due, without very clear evidence, especially, where there are other means of proving the case, if a true one."

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Statements without prejudice.—"Communications, admissions or statements, written or verbal, made by a party to an action, pending the dispute or action, and made expressly or impliedly 'without prejudice' to the issue of compromise or settlement, cannot be given in evidence

one of the parties was not empowered to enter into it. 83 P. R. 1877.

Cases.—Vide 20 C. W. N. 1217; 52 Ind. Cas. 348; 52 Ind. Cas. 443

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to render the confession unreliable, which would appear to gain any advantage to the

Confessions.—The word "confession" as used in the sections of the Evidence Act relating to confessions, should not be construed as including a mere inculpatory admission which falls short of being an admission of guilt 7 A. 646=A. W. N. 1885, 131. A confession may be defined as "an admission made at any time by a person charged with an offence, stating or suggesting the inference that he committed the offence" 16 P. R. 1886 Cr.; 51 P. L. R. 1905=20 P. R. 1905 Cr. An incriminating

statement, which falls short of absolute confession, but from which the inference of a guilt follows, is a 'confession', 51 P. L. R. 1905, 6 A. 509. (F. B.), 14 B. 260 (F. B.) It is admissible even when it is not sworn. 3 P. R. 1880 Cr., see also, 12 Ind. Cas. 96

To be taken with caution.—A judge, who is to decide whether a confession is admissible in evidence or should be rejected, should exercise all necessary caution and vigilance, before admitting as voluntary, any confession tendered in evidence. L. B. R., (1893—1900), 145, 31 P. R. 1867 Cr., 47 P. R. 1866 Cr.

Must be taken as a whole.—The confession must be taken as a whole 15 B. 452 When confession contains extenuating as well as incriminating matter, the extenuating portion must be taken into consideration no less than the incriminating portion, except when there is evidence to contradict it 4 P. R. 1872 Cr., A. W. N. 1883, 148.

Scope.—In criminal cases a confession made by the prisoner can be given in evidence against him, if the prosecution show it was free and voluntary, not otherwise. It will be held not to be free and voluntary if it were induced by any threat or promise made by a person in authority. Any expressions suggesting that it would be "better" for the prisoner to tell the truth import a threat or promise *R. v. Bradley*, 5 Cox C. C. 523—21 L. J. M. C. 130 A confession is not admissible in evidence, if it was obtained by any inducement held out to the accused by a person in authority in the proceedings which amounts to a ~~promise~~ threat of some temporal advantage or disadvantage having direct reference to the charge, and to its result or consequences to him The reason for this rule is that such an inducement might cause the accused to make an untrue confession (*Powell Ev 105*) See also U. B. R. (1897-1901) Vol I, 147

U. B. R. (1897-1901) Vol I, 192. 75 Ind. Cas. 152.

Person in authority.—The term includes the prosecutor, officers of justice, and other persons in authority (*R. v. Gibbons*, 1 C. "persons in authority case, their clerks, custody of the prisoners, attorneys. Master themselves prosecuting, or the charge is connected with the employment. (*Cooke Cas 189*) See also 2 L. B. R. 316 A *panchayat* is a authority. 11 C. W. N. 904; *contra*, 4 Bom. L. R. 785. The of a village is a person in authority. 26 Ind. Cas. 129.

Having reference to the charge against the accused.—The offer of some merely collateral convenience, or temporal advantage unconnected with the result of the prosecution, or an appeal to a man's moral feelings, is not such an inducement as will render a confession inadmissible. The promise, or words, to have such effect, must have reference to the result of the prosecution, suggesting a more favourable determination of the proceedings. *R. v. Lloyd*, 6 C. & P. 393.

Temporal nature.—The "threat or promise" must offer some temporal advantage or disadvantage connected with the result of the prosecution in order to render a confession involuntary. Exhortations to confess on moral or religious grounds are not sufficient to exclude a confession. (*R. v. Jarvis*, L. R. 1 C. C. R. 95; *Cockle Cas.* 186).

Retracted confession.—Vide 31 Ind. Cas. 83; 34 Ind. Cas. 642; 26 C. W. N. 1010

Persons in authority—Cases.—Zamindars qua zamindars are not persons in authority. 10 S. L. R. 140. A headman is a person in authority. 37 Ind. Cas. 314. A Lambardar is a person in authority 4 Lah. L. J. 235. It includes the prosecutor. 26 C. W. N. 541

Cases.—52 Ind. Cas. 881; 30 C. L. J. 503; 23 C. W. N. 886; 53 Ind. Cas. 145; 20 Cr. L. J. 562; 70 P. L. R. 1918, 45 C. 557, 11 P. R. Cr. 1918; 11 P. R. Cr. 1916; 37 Ind. Cas. 814. 22 C. W. N. 461; 43 I. C. 605; 22 Bom. L. R. 1247, 54 Ind. Cas. 881, 2 Lah. L. J. 653; 32 C. L. J. 204.

Confession to police officer not to be proved. 25. No confession made to a police officer shall be proved as against a person accused of any offence.

Note.—In Upper Burma, insert—"Who is not a Magistrate" after the word police officer.—Vide s 4 (3) (c) of Act 13 of 1898.

Police officer.—The confession made to a police officer by an accused is not admissible against him; a fortiori it is inadmissible against a co-accused. 12 Bom. L. R. 899; 10 C. P. L. R. Cr. 16; L. B. R. (1872-1892), 479; 10 C. L. J. 13; 3 M. L. T. 333. 14 Ind. Cas. 896.

A gaung appointed under the Burma Rural Police Act is a police officer. 1 L. B. R. 65; L. B. R. (1872-1892), 479, 3 L. B. R. 283—5 Cr. L. J.

evidence. 19 Ind. Cas. 508. The word "Police officers" includes foreign police officers. 15 Ind. Cas. 800. A confession made to a

'custody, is an exception to the general rule excluding all statements made while in such custody, and as such, its operation must be confined to only such statements as properly fall within the description therein given. If they amount to confessions, they ought to be excluded 11 B. H. C. R. 242; 10 C. P. L. R. Cr. 25. The fact to be discovered by such a statement must be a material thing, and not a mere mental state induced in another by that statement. 16 C. P. L. R. 122. See also 32 Ind. Cas. 321. Two men cannot make a statement leading to a discovery. Both no doubt may give information to the police, but it is only the information first given which can be admitted under this section 7 P. R. 1916 Cr; but see 3 Ind. Cas. 474. A statement made by the accused persons while in police custody in consequence of which arms are found buried in a field is admissible in evidence against the accused 72 P. L. R. 1916. See also 32 Ind. Cas. 136. The exception contained in this section to the general rule must be very strictly confined within its legitimate limits. 11 P. R. 1915. Cr.—16 Cr. L. J. 545.

Cases.—13 A. L. J. 1077, 9 O. L. J. 190; 9 P. L. R. 1922, 2 A. L. J. 178. 19 C. L. J. 439; 42 Ind. Cas. 1002; 43 Ind. Cas. 111, 48 C. 557, 54 Ind. Cas. 479; 55 Ind. Cas. 685.

28 If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Note.—When the legislature wished to make an exception to the general rule it did so by a separate section; this section accordingly declares under what circumstances a confession rendered irrelevant by s. 24 may become relevant. 2. L. B. R. 168.

Scope.—If the impression produced by the promise or threat is clearly shown to have been removed e. g. by lapse of time or by an intervening caution given by some person of superior (but not of equal or inferior) authority to the person holding out the inducement—a confession subsequently made will be strictly receivable. (*Phillips v. R.* 231); 45 Ind. Cas. 705.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or he

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or he

cause he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Scope.—"A confession shall not be inadmissible in evidence merely because it has been obtained by deception. Even when the prisoner has made it only on receiving a preliminary oath of secrecy from the person trusted, such person will be competent and compellable to reveal it (*R v Shaw* 6 C. & P. 372); and a confession made by a prisoner while drunk has been received. *R. v. Spilsbury* 7 C and P. 187"—*Powell*, 111.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation—"Offence," as used in this section, includes the abetment of, or attempt to commit the offence.

Illustrations.

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B. said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried

Legislative changes.—The explanation was inserted by Act III of 1891.

Scope—This section relates to the confessions made by accused persons who are being jointly tried for the same offence. 5 C.P.L.R. Cr 9. A confession duly made, at any time, by one of the several accused persons under trial jointly for the same offence can be used under the same section. *Rat. Un. Cr. C.* 510. The confession need not be made in presence of the other accused. 2 *Weir*. 745. Such confession is an evidence of the weakest kind. 8 *Cr. L. J.* 393; 2 *Weir*, 741.

Principle—Where a person admits his guilt to the fullest extent and exposes himself to the pains and penalties provided for his guilt, there is guarantee for its truth, and the Legislature provi-

that his statement may be considered against his fellow prisoners charged with the same crime. 6 B. 288-6 Ind. Jur. 460; see also S. C. 153, Oudh; Rat. Un. Cr. C. 84; 24 P. R. 1910 Cr.; 81 Ind. Cas. 891, 81 Ind. Cas. 249; 76 Ind. Cas. 1025; 75 Ind. Cas. 701.

Court—includes both judge and the jury. 4 C. 348=3 O. L. R. 270. (P. B.) 1.

ment of a fellow prisoner kind and it is the duty Un. Cr. C. 436; Rat. 2 Weir. 742; 29 A. 434; 1892) 388; 38 B. 156, 11.

Court may take into consideration.—These words mean "take into consideration for the purpose of arriving at a conclusion of fact." Rat. Un. Cr. C. 311; 4 O. C. 69; 53 Ind. Cas. 691.

Tried jointly.—These words indicate that the confession should be made before the charge is framed. L. B. R. (1893-1900), 642. The offence for which they are being tried must also be the same. Rat. Un. Cr. C. 450. When the confessing accused is not on trial, his confession cannot be used. 11 P. R. 1900 Cr., 10 C. L. R. 553, 15 P. R. 1911 Cr.; 22 Ind. Cas. 157.

Abetment.—Vide 39 P. R. 1885 Cr., S. C. 143 Oudh.

Retracted confession.—Retracted confession unless corroborated cannot be the basis of conviction. Rat. Un. Cr. C. 108; 5 P. R. 1911 Cr.; 81 Ind. Cas. 62; 40 C. L. J. 551; 68 Ind. Cas. 401.

Magistrate in a Native State.—A confession made before a Magistrate in a Native State cannot be admitted into evidence under this section. 16 Bur. L. R. 261.

Corroboration.—53 Ind. Cas. 521, 43 B. 739, 81 Ind. Cas. 817

Cases.—20 A. L. J. 178; 65 Ind. Cas. 562; 22 C. W. N. 408; 46 Ind. Cas. 842, 41 Ind. Cas. 160, 57 Ind. Cas. 462.

Admissions 'not conclusive proof, but may estop.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Scope.—An admission made before a Registrar or contained in a deed of sale that the consideration has been received by the vendor, raises only a rebuttable presumption, the weight of which varies with the circumstances of each case. A. W. N. 1899, 142. Admission must be taken as a whole. 60 Ind. Cas. 483

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts, in the following cases :—

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death -

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty ; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind ; or of a document used in commerce written or signed by him ; or of the date of a letter or other document usually dated, written or signed by him.

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) When the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which if it were proved, he would have been likely to be aware, and when such

or gives opinion as to public right or custom, or matters of general interest ;

ment was made before any controversy as to such right, custom or matter has arisen.

(5) When the statement relates to the existence of any relationship * [by blood, marriage or adoption] between persons as to whose relationship * [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) When the statement relates to the existence of any relationship * [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (a); or is made by several persons and expresses feelings relevant to matter in question.

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(a) The question is whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

* These words in s. 32 cls. (5) and (6), were inserted by the Indian Evidence Act Amendment Act (18 of 1872).

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London to whom the cargo was consigned stating that the ship sailed on a given day from Bombay harbour is a relevant fact.

(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Scope.—This section is also an exception to the hearsay evidence. Secondary evidence of any oral statement is called hearsay. The repetition by a witness of that which he was told by some one else who

misrepresenting the words of the third person; or the latter may have spoken hastily, inaccurately or even falsely. Moreover the person who is really responsible for the statement did not make it on oath, he was

affected by it has an opportunity of cross-examining the witness. (*Powers Ev. 305*). There are various exceptions to this general rule and they are based on good reasons. The exceptions as stated in this section are as follow—Statements written or verbal, of relevant facts when made by a person who is (a) dead, or (b) who cannot be found, or (c) who has become incapable of giving evidence or (d) whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are admissible (1) when it relates to the cause of his death, or (2) when it is made in course of business; or (3) when it is made against the interest of the maker; or (4) when it gives opinion as to public right or custom, or matters of general interest; or ship; or (6) when it is made (7) when it is made in document section 13, clause (a), or it expresses feelings relevant to the matter in question.

Verbal.—Includes sign. 7 A. 385 (F. B.), 2 P. R. 1836, Cr.

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by a dying man. 4 Ind. Cas. 1127. A Court should receive a dying declaration; see also 4 P. W. R. 1909—1. Oral evidence of such declarations need not be made in the presence of the Court. 1, 6 C. W. N. 621.

Cases.—67 Ind Cas 577, 49 C 358, 49 C. 600; 4 Bom. L. R. 434; 20 Ind Cas 220, 34 C. 693; 23 Ind. Cas. 195; 2 Bom. L. R. 1129; 6 C. W. N. 72; 8 C 211, 9 P R 1900, Cr., 18 P. R. 1886, Cr., 17 P. R. 1886 Cr., 17 P R 1901 Cr., 29 P. R. 1887 Cr., 15 W. R. Cr. 11; 5 Lah 305

Course of business.—The grounds for reception of such evidence

any particular transaction of an exceptional kind, such as the execution of a deed of mortgage, but to business of professional employment in which the declarant was ordinarily or habitually engaged. The business referred to may be of a temporary character. 13 C. W. N. 71—1 Ind. Cas 376 The law under this clause does not require corroboration as under s 34 16 C L. J. 24

Cases.—4 Lah L J. 36, 1922 P 111—67 Ind Cas. 57; 18 N. L. R. 85, 46 B 753, 9 B L R App 42, 77 I C. 798; 26 Bom. L. R. 563; 1919 Pat 352, 48 Ind Cas. 375, 25 C W. N. 908, 62 Ind. Cas. 946.

Clause (3).—The reception of this evidence is upon the presumption that what a man states against his interest is probably true. But the interest involved must be pecuniary or proprietary. Any statement by a person tending to show that he owes money, or has received money, owing to him, is considered to be against his interest (*Higham v. Ridgway*, 10 East, 109, Cockle Cas. 196). In *Sussex Peerage Case*, 11 C. and F. 108 it was laid down that where the statement was made under cir-

against the landowner's proprietary rights. 31 C. 903. See also, 23 B 32 C. 6, 11 Ind. Cas. 380; 8 Ind. Cas. 268; 35 C. 751; 30 I. A. 5

W. N. 465 (P. C.); 68 Ind. Cas. 314; 78 I. C. 1033; 78 Ind. Cas. 21
53 Ind. Cas. 863; 63 Ind. Cas. 685.

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exposing them to constant contradiction. (*Phipson Ev.* 257). Public rights are rights of highway, ferry, fishery in a tidal river etc. General rights are those affecting any considerable section of the community—e.g. questions of boundaries of a parish or manor. (*Ibid.*) In proof of public or general rights or customs, or matters of public or general interest, statements made by a deceased person of competent knowledge as to the existence of such rights, etc., and as to the general reputation thereof in the neighbourhood, if made "*ante litem motam*," are admissible. (*Weeks v. Parks*, 1 M. & S. 679, Cockle Cas. 212). Such evidence is not admissible as to private rights. 25 B. 433 Public or general rights must be common to all persons interested, as to all the inhabitants of a particular manor. A right is not within this rule simply because it is enjoyed by many persons in their own individual capacities, such as a right of common enjoyed by several persons in the same manner in their individual capacities on an aggregate of private rights. Evidence of reputation, or declarations, is admissible although no actual enjoyment of the right be proved. (19 L. J. Q. B. 388—15 Q. B. 791; Cockle Cas. 215.) But it is only to be received as showing a general reputation and not as evidence of particular facts. (*1904*) 2 Ch 534) declarations must they must have connection that it may be concluded that means and the *le v. Broxtowe*, 4 applicable to a in issue, and not

Clause. (5).—According to English law, the statements, verbal or written, and conduct of deceased persons, who were related by blood or marriage with a family in question, if made "*ante litem motam*," are admissible to prove relationship, or family succession, or facts upon which such matters depend, such as births, marriages and deaths (*Vide Cockle Cas. 202*, *Berkeley Peerage Case*, 4 Campbell, 401). A controversy in a family, though not at that moment the subject of a suit, is sufficient to the time of such "*ante litem motam*" 206). In a case

10 L. W. 67.

Clause (6)—Horoscope to prove age is not admissible under this clause. 17 C. 849. The words 'family pedigree' do not necessarily include such a pedigree as is in the possession of a member of the family.

Las. 900.

Clause (7)—A deed of mortgage containing an assertion of title as owner by the mortgagor is relevant under s. 13 as evidence of the title asserted. Where the mortgagor is dead, the recitals in the deed as to how he got the title are also evidence under this clause as statements made by a deceased person in a document relating to a transaction mentioned in s. 13—1921 M. W. N. 560.

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33. Evidence given by a witness in a judicial proceeding, or

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated before any person authorized by law to take is relevant for the purpose of proving, in subsequent judicial proceeding, or in a later stage of the same judicial proceeding, truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of case, the Court considers unreasonable ;

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Scope.—It has long been settled as one of the exceptions to the general rule excluding hearsay that the testimony of a witness given in a former action or at a former stage of the same action is competent in a subsequent action or in a subsequent proceeding in the same action, where it is shown that the witness is dead and that a valid legal reason exists for his non-production, that the parties and questions in issue are substantially the same, and that such former testimony can be substantially reproduced upon a second hearing. (*Burr Jones* § 336).

Parties.—The rule is that such evidence is proper, not only where the point in issue is the same in a subsequent suit between the same parties, but also for or against persons standing in the relation of privies in blood, privies in state or privies in law. The testimony will not necessarily be rejected, although there were other parties to the record in the former proceedings, when the issues are substantially the same and the parties affected by the second suit had the opportunity to cross-examine the witnesses. But the parties must be substantially the same, and it is for the party offering the testimony to establish this. (*Burr Jones* § 338). In two suits the parties must be the same or their representatives in interest. 12 C. 627. See, C. 42, 8 A. 672, A. W. N. 1896, 182.

Form of proceedings—If the parties and the issues are the same in each case, it is not necessary to the admission of the testimony that the form of the second proceeding should be the same as that of the first. Nor that the former trial should be a trial immediately preceding that in which the testimony is offered. The rule covers any former trial, where evidence was given by a party since deceased which it is subsequently desired to use. A testimony given in a preliminary examination on a criminal charge may be admitted at the trial (*Burr Jones* § 339) Evidence in section 9 case is admissible in a subsequent suit. 23 C. 44 Depositions given before a counsel is admissible. 3 B. 334.

Criminal cases.—The application of this section in criminal cases, ought to be confined within the narrowest limits. 17 Bom. L. R. 570 See also 18 Bom. L. R. 284, 25 O. C. 142; 2 A. 696; L. B. R. (1872-1892), 134, 3 B. 334, Rat. Un. Cr. C. 347, A. W. N. 1898, 72, A. W. N. 1881, 138, 2 Weir 755; 17 P. R. Cr. 1919, 42 A. 24, 12 P. L. R. 1919; 52 Ind. Cas. 385; 35 M. L. J. 657.

Cross Examination—The ground upon which the exception stands is that, in an authorized action or proceeding, testimony being given under the solemnity of an oath, where the witness was or might have been cross-examined, the probabilities of the truth having been told are so great as to justify the resort to that testimony when the witness has died or become insane since the former trial. It is immaterial to the admission of the evidence whether the party actually cross-examined, or did not cross-examine, if he were bound so to do. All that is required is that he had an opportunity to cross-examine the witness. (*Burr Jones* § 341) So where a plaintiff was examined in chief but died before cross-examination his deposition is not admissible. 20 M. L. J. 400 See also 23 W. R. 42. The words "opportunity to cross-examine" include the method of cross-interrogatories. 19 B. 749 See 6 A. 224; 25 B. 168—2 Bom. L. R. 761; 71 C. W. N. 230.

Incapable of giving evidence.—These words denote incapacity of a permanent character, and not of a momentary or temporary character. 4 C. L. R. 504; *contra* 6 C. 774. See 22 W. R. 343; 2 A. L. J. 91; 7 C. 42—8 C. L. R. 273. A party's deposition is not admissible under this section. 14 B. L. R. App. 3 It is only in extreme cases of expense or delay that the personal attendance of a witness should be dispensed with. 2 A. 646. For meaning of "could not be found," vide A. W. N. 1905, 202. See 21 W. R. Cr. 56; 20 W. R. Cr. 69; 21 W. R. Cr. 12.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

34 Entries in books of account, regularly kept in
 Entries in books of course of business, are relevant
 account when relevant. they refer to a matter into . . .

Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000 and shows entries in his account books showing B. to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence to prove the debt.

Scope—Entries to be admissible as evidence by way of corroboration of other testimony must be made in the regular course of business. Rat. Un. Cr. C. 344. Although this section makes an entry in a book of account relevant, such a book is not by itself relevant to disprove an alleged transaction by the absence of any entry concerning it. 10 C. 1024. It must be kept in regular course of business in order to be admitted under this section. 8 Ind. Cas. 81; A. W. N. 1881, 65; 2 O. C. 311, 63 P. R. 1897, 29 C. 334; 45 P. R. 1899; 25 B. 433; 52 Ind. Cas. 704.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Scope—This section which is duly made & itself a relevant fact." absence in them of at

and they must be made by public official duties. 5 Ind. Cas. 827. See R. 139; 15 M. 19; 17 C. 830, 21; 9 C. 431; 9 C. 586; 2 S. L. R. 25 A. 90; 14 O. C. 63; 9 Ind. Cas. 11; 1 Bur. L. J. 111; 3 Pat. L. R. 866; 65 Ind. Cas. 182; 1922 P. A. L. J. 601; 25 O. C. 229, 68 L. C. 670; 25 C. W. N. 0/9, 22 A. L. J. 690; 76 Ind. Cas. 449; 3 Pat. 85; 323; 12 Bur. L. T. 88; 52 Ind. Ind. Cas. 20; 29 C. L. J. 607; 2 L. J. 141; 25 C. W. N. 857; 1 Cas. 177; 63 Ind. Cas. 226;

36. Statements of fact in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made

Relevancy of statements in maps, charts and plans.

under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Scope.—*Tanwarah v. E. I. Co.* 1882, 11 B. & C. 111.
line between
W. N. 220
7. C. W. N. 8
the parties *quantum valet* 64 Ind. Cas. 326.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of "any other legislative authority in British India constituted for the time being under the Indian Councils Act, 1861, the Indian Councils Acts, 1861 and 1892 or the Indian Councils Acts, 1861 to 1909" or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.†

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

Scope.—Unauthorized translation of the Code Napoleon is not a work to which reference can be made under this section. 26 C. 931—3 C. W. N. 614. But Ceylon Insolvency Ordinance can be looked into. 14 Ind. Cas. 560.

* Substituted by Act 10 of 1914

† The last paragraph added by s. 2 of the Indian Evidence A (5 of 1859) was repealed by the Schedule No. 11 of Act 10 of 1914.

HOW MUCH OF A STATEMENT IS TO BE PROVEN

39. When any statement of which evidence is given forms

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Principle.—If a part of the conversation or transaction has been proved by direct testimony, the remainder so far as it is relevant, may be proved by circumstantial evidence, and may be given in evidence in such a way as to show the truth or falsity of the testimony already given, or to show the truth or falsity of certain facts from which the truth or falsity of the testimony may be inferred, or to show the truth or falsity of the facts from which the truth or falsity of the testimony may be inferred.

JUDGMENT OF COURTS OF JUSTICE WHEN RELEVANT.

40. The existence of any judgment, order or decree which by

40. The existence of any judgment, order or decree of a Court of law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

—Judgments are of two kinds—in *Rem* and in *Person*—

been clearly defined, but it
 'gments affecting the legal
 e.g. Admiralty judgments
 decrees,' grant of Probate
 kruptcy. Such judgments
 arties or strangers. Judg-
 s between persons not so
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 isive against all persons of

facts in issue. but an judgment is a conclusive against all persons of their legal effect, as distinguished from the facts upon which they are based. (*Crockle Cas. 44*). All judgments whatever are conclusive proof as against all persons of the existence of that state of things which they actually effect when the existence of the state of things so effected is a fact

in issue or is or is deemed to be relevant to the issue. (*Stephen's Digest* § 40.)

Scope.—This section lays down that judgment, order or decree in a previous suit is a relevant fact, i.e. admissible in evidence if it operates as *res judicata* or prevents any Court from taking cognizance of a suit or holding a trial. According to the phraseology of English lawyers such judgments are admissible when they operate as estoppel by record. A

... matters which merely came or which were incidentally argument from the 20 How. St. Trial, 355 ; *Cockle Cas* 40) A former judgment between the same parties on the same subject matter will operate as an estoppel and be conclusive only when it is so pleaded, or there is no opportunity of so pleading it. Otherwise it is only a relevant fact from which the Court may draw a conclusion in favour of the person who tenders it in evidence (*Voight v. Winch*, 2 B & Ald 662, *Cockle Cas* 44) This section was intended to include all ... whether civil or criminal particular issue, and would operate as *res-*

Cases.—A finding in a former suit where the question was tried between all the parties to the subsequent suit, is admissible as evidence, 22 W. R. 457. "It is not competent for the Court, in the case of the same question arising between the same parties, to review a previous decision." *Per Lord Macnaghten*, in *Badar Bee v. Habin Merican Noordin* (1909) A. C. at p. 623.

"The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form to every point which pro- which the parties exercised right forward at the time."

41. A final judgment, order or decree of a competent Court, Relevancy of certain in the exercise of probate, matrimonial, judgments in probate, etc., admiralty or insolvency jurisdiction, which jurisdiction, confers upon or takes away from any person any legal character, or which declares any person to be to any such character, or to be entitled to any specific thing, not

"legal character" when it has reference to a judgment of a Court of

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of the truth of the facts which they state.

Relevancy and effect of judgments, order or decrees, other than those mentioned in section 41.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right-of-way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right-of-way, is relevant, but it is not conclusive proof that the right-of-way exists.

Scope.—Judgments are not deemed to be relevant as rendering probable facts which may be inferred from their existence, but which they neither state nor decide—

as between strangers,

as between parties and privies in suits where the issue is different even though they relate to the same occurrence or subject matter;

or in favour of strangers against parties and privies.

But a judgment is deemed to be relevant as between strangers—

(1) if it is an admission, or

(2) if it relates to a matter of public or general interest, so as to be a statement under s 13—*Stephen's Dig.* § 44.

Where any question of rights or custom is to be decided, opinion of persons, who would be likely to know its existence are under s 48 admissible in evidence. A judgment of the High Court, regarding the transferability of tenures held under similar conditions in a joining village of the same *pergana*, is evidence of the transferability. 23 C. 427. When a question of status is in issue,

ment and orders between the parties in mutation cases, succession certificate cases, rents suits, suits for possession, etc. are admissible in evidence. 1924. Nag. 387.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgments, order or decree is a fact in issue or is relevant under some other provision of this Act.

Illustrations.

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C, is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Legislative changes.—Illustrations (e) and (f) were added by Act 3 of 1891.

Scope.—“Having now disposed of judgments which render the matter *res judicata* between the parties, judgments which from their special character are conclusive against all the world, and judgment which as relating to matters of a public nature, are relevant though not conclusive, between strangers to the suit, we come to the general rule of exclusion, *viz.*, that all other judgments are irrelevant. To this rule however, there is a highly important limitation. A judgment, though

inadmissible for proving the truth of what it asserts, may be valuable as evidence for some other purpose. Its very existence may be a fact in issue, and then, of course, evidence of it may be given; or it may be a fact relevant within some one of the classes of relevant facts given in the Act, and then, again, evidence of it can be given." (*Cunningham Ev* 190) "The cases contemplated by s. 43 are those where a judgment is used not as *res judicata* or as evidence more or less binding upon an opponent by reason of the adjudication which it contains. But the cases referred to in s. 43 are such, I conceive, as the section itself illustrates *vis*, when the fact of any particular judgment having been given in a matter to be proved in the case. As for instance, if A sued B for slander, in saying that he had been convicted of forgery and B justified it upon the ground that the alleged slander was true, the conviction of A for forgery would be a fact to be proved by B like any other fact, in the case, and quite irrespective of whether A had been actually guilty of the forgery or not. This I conceive, would be one of the many cases alluded to in s. 43." *Per Garth C J* in *Gujjal v. Fatehlal* 6 C. 171 (F. B). Similarly *Straight J.*, in 12 A. 25 observed "Section 43 of the Evidence Act declares that judgments, orders and decrees other than those mentioned in ss 40, 41 and 42 are of themselves irrelevant that is, in the sense that they can have any such effect or operation as is mentioned in those recited sections as *qua* judgments, orders and decrees, but I do not take this to make them absolutely inadmissible, when they are the best evidence of something that may be proved *aliunde*

Cases—Decrees in former suit are relevant under this section, but not sufficient to bind those who are not parties to the suits 60 P R 1875. A judgment between the plaintiff and their parties is not admissible though the facts found therein may support plaintiff's title disputed in the present suit 1925 Pat 63. The judgment of a Criminal Court is inadmissible in evidence 1925 Rang 143.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or in competency of Court, may be proved.

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only a rule of law relating to evidence, but also a rule of procedure. 27 C. 11 = 3 C. W. N. 660. A judgment of a Court, which has no jurisdiction is not binding. The words 'not competent' refer to a Court acting without jurisdiction. 12 M. 228. So long as letters of administration are not revoked by a competent Court, the allegation that it is invalid cannot be entertained. 10 C. W. N. 422. This section does not enumerate the ground on which a decree can be attacked by a separate suit. 9 A. L. J. 1; see 21 A. 272; 27 C. 11; 21 B. 205; 3 N. L. R. 185; 8 Ind. Cas. 1179; 1 C. L. J. 65; 5 C. W. N. 559; 21 C. W. N. 594; 1921 Pat. 209.

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OPINIONS OF THIRD PERSONS WHEN RELEVANT.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting [or finger impressions],* the opinions upon that point of persons specially skilled in such foreign law, science or art, † [or in questions as to identity of handwriting] [or finger impressions] * are relevant facts.

Such persons are called experts.

Illustrations.

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such un-

* The word "or finger impressions" in both places where they occur in s. 45, were added by the Indian Evidence Act, 1899 (5 of 1890). For discussion in Council as to whether "finger impressions" include "thumb impressions" see Gazette of India 1898 Pt. VI, p. 24.

† These words within brackets in s. 45 were inserted by the Indian Evidence Act Amendment Act (18 of 1872.)

soundness of mind, usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of expert on the question whether the two documents were written by the same person or by different persons, are relevant.

paid professional expert who makes a living by giving such evidence, but he must have devoted sufficient time and study to the subject to render his evidence trustworthy. The Judge decides on the competency of an expert witness; the jury decides on the weight of his evidence (*Powell, Ev. 41*). The matters upon which such opinion evidence can be given include *inter alia*, causes of death, insanity, effects of poison, genuineness of works of art, value of articles, genuineness of hand-writing, proper navigation of vessels, meaning of trade terms, foreign law, etc. And in support of such opinion evidence the

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Cases.—To base a conviction on the evidence of an expert in hand-

the evidence of an expert in hand-writing is inadmissible, if there is comparison with proved or admitted hand-writing in open Court in presence of the party affected. 16 C. W. N. 812—14 1st Cas. .

C. 606. The value of ordinary or non-expert oral evidence mainly rests on the credibility of the witness—his inclination and capacity, for telling the truth; the value of *expert* evidence rests on the skill of the witness—the extent of his competency for forming a reliable opinion. 3 N. L. R. 455, 13 O. C. 1; 4 L. B. R. 125. But if he has not been cross-examined, the weight of his evidence is not diminished 55 Ind. Cas 273.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a) The question is whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that the other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Scope—Facts not otherwise relevant, have in some cases been permitted to be proved as supporting or being inconsistent with the opinion of experts. (*Step. Dig. art. 50*) Facts although otherwise irrelevant, may be given in evidence in corroboration, illustration, or rebuttal of opinion. So, on cross-examination he may be asked, *inter alia*, whether he has not expressed opinions inconsistent with his present testimony, and if he deny the fact it may be independently proved (*Phipson, Ev. 347.*)

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.
The question is, whether a given letter is in the hand-writing of A, a merchant in London.

B is a broker, to whom the letter is addressed, and who receives it, and whose duty it is to deliver it to the person to whom it is addressed, and who is asked by the person to whom it is addressed, whether it is in the hand-writing of A.

The opinions of B, C and D on the question whether the letter is in the hand-writing of A are relevant, though neither B, C nor D ever saw A write.

other evidence of handwriting must rest is greater or less degree upon inferences drawn from the appearance of the writing in question or other circumstances." (*Wills, Civ. Ev. 184*).

document or saw it written, or who is qualified to express an opinion

Cas. 234.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Scope.—By s. 98, evidence may be given with reference to a document, to show the meaning of technical, local and provincial expressions, abbreviations and words used in a peculiar sense. For this purpose the opinions of persons having special means of knowledge on the subject would be the best evidence. (*Cun. Ev.* 202). Section 32, clause (4) makes the statement of dead persons, as regards the existence of public right or custom or matters of public or general interest, relevant. These are all exceptions to the rule of rejection of opinion evidence. So the statements made by persons who are in a position to know of the existence

744 P. C.; 23 C. 427; 12 C. W. N. 74 P. C.

Opinions as to usages, tenets, etc., when relevant. **49.** When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,
the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

Cases.—Where witnesses, members of a family, have special means of knowledge, as to the usages of the family, their evidence will be relevant under this section, so far as the existence of such usage is concerned, 32 C. 6. It is admissible evidence for a witness to give his opinion on the existence of a family custom, and to state, as the grounds of that opinion, information derived from deceased persons. But it must be the expression of independent opinion based on hearsay, and not mere repetition of hearsay. 10 M. L. J. 267 P. C.—23 A. 37. As regards proof of paternity of illegitimate child, vide. 27 M. 32.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise has special means of knowledge on the subject, is a relevant fact :

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under sections 494, 495, 497 or 498 of the Indian Penal Code

Illustrations

(a) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Scope.—The scope of this section is, in the opinion of the Court, to be considered, so far as it relates to the opinion of a person, as to the existence of a relationship, his own opinion, and not the opinion of others. The opinion of a person, as to the existence of a relationship, may be a relevant fact, but it is not sufficient to prove a relationship, but by no means to prevent any person from stating a fact of which he or she has special means of knowledge. A husband or wife is not, therefore, precluded from proving his or her marriage. 9 M. 9—1 Weir 572. Under the proviso to this section, in proceedings of the kind therein specified, opinion relevant under this section is not by itself sufficient to prove marriage, which must, in consequence, be proved in some other way. 5 P. R. 1894 Cr; see also 5 A. 233—A. W. N. 1883, 1. Where marriage is an ingredient in any offence, e. g., adultery, bigamy and the like,

puted question of relationship, and can, of course, rely upon statements of deceased persons under s. 32, cl. (5), upon opinion expressed by conduct under s. 50. 27 M. 32

51. Whenever the opinion of any living person is relevant, the grounds of opinion, when grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Object—An important test of the value of the expert's evidence thus provided. The Court is not left to the bare statement of an opinion.

CHARACTER, WHEN RELEVANT.

52. In Civil cases the fact that the character of any person is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

Principle.—"The general character is not in issue. The business of the Court is to try the case, and not the man; and a very bad man may have a very righteous cause" (*Thompson v. Church*, 1 Rost. 312; *Wig. Cas.* 29).

Exception.—"The general character is in issue that evidence of the general character is relevant."

cases, are of this character, for such cases are not infrequently mere speculative and black-mailing schemes. The consequences to the defendant of a verdict against him in such a case are most serious, for the issue as to him involves his fortune, his honour, and his family. From the very nature of the charge, it often happens that an innocent man can only meet the issue by a denial of the charge and proof of his previous good character.

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Scope.—The character of the parties to civil action is generally irrelevant and inadmissible. *Attorney General v Bowman* 2 B. and P. 532.

In criminal cases {previous good character relevant. **53.** In criminal proceedings the fact that the person accused is of a good character is relevant.

Principle.—The accused in a criminal case can always give evidence of his good character. *R. v Rolton*, 34 L. J. M. C. 57. A man's character is often of the utmost importance in explaining his conduct and judging of his innocence or criminality. Many acts, which standing alone, would be suspicious, are freed from all suspicion when we come to know the circumstances and character of the person by whom they are done. (*Cunningham Ev* 205) No importance can be attached to evidence of good character when the case against the accused is clear.

Evidence of character.—The proper form of the question is, "From your knowledge of the prisoner does he bear a good character for honesty, humanity, etc" as the case may be. (*Roscoe, Ev.* 95).

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation, 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Legislative changes.—This section has been substituted by Act of 1891.

Scope.—It is generally stated, that evidence of a prisoner's good character is admissible, but evidence of his bad character is inadmissible except in answer to evidence of his good character. But why cut up the rule into two parts? It seems to be simply this—evidence of the prisoner's character, good or bad, is always admissible at the prisoner's option whenever his good character is admitted his bad character is admissible. (*Cockle's Cas.* 112) "Evidence of character must, of course, be applicable to the particular nature of the charge. In one case, for instance, that a party

15 W. R. Cr. 37, 7 W. R. Cr. 7; 8 W. R. Cr. 11, 6 W. R. Cr. 72; 2 B. H. C. R. 125; 5 L. B. R. 4; 15 P. R. 1888 Cr., 5 Bom. L. R. 1034.

Explanation 1.—In all actions or proceedings in which a plaintiff's character, is actually in issue, as in actions for defamation, evidence of the plaintiff's character may be given. *Scott v. Sampson*, L. R. 8 Q. B. D. 491. In prosecution for rape, or assault to commit rape, or indecent assault evidence of the bad character of the prosecutrix may be given in defence, her character, under the circumstances, being considered, to some extent, in issue. (*R. v. Clarke*, 2 Starkie 241; *Cockle's Cas.* 112). In

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mine what punishment to award, and, to do this should take into consideration, not only the nature and gravity of the offence committed, but also the character of the accused, the bad character of the accused then becomes a fact in issue. Evidence of bad character being admissible as affecting the sentence, evidence may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition is shown. Evidence as to previous convictions is an exception to this rule. Evidence of departmental punishment is inadmissible for the purpose. L. B. R. (1893-1900), 357.

Explanation 2.—It has been held that if a prisoner's counsel elicited on cross-examination, from the witnesses for the prosecution that the prisoner had a bad character, the prisoner might be put in character had
676 See also
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guilty knowledge, or whatever it might be, no question ought to be permitted and no evidence allowed to show that he is a man of bad and dishonest character. D. (the accused) at the trial charged the jury with the fact that he was a man of bad and dishonest character. D. (the accused) at the trial charged the jury with the fact that he was a man of bad and dishonest character.

(1872-1892) 449.

The Evidence Act gives the Court a discretion to admit previous conviction as evidence of character, at any stage of the trial, in all cases in which there is such a connection between the act of which the prisoner

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The proof of a previous conviction not contemplated by s. 75 Penal Code, may be adduced after the accused is found guilty, provided the previous conviction is relevant under the Act. 16 Bom. L. R. 934=26 Ind Cas 996.

Section 55. The fact that the accused had a bad character is not relevant.

2 Lah. L. J 653

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Character as affecting damages

Explanation.—In sections 52, 53, 54, and 55, the word "character" includes both reputation and disposition; but [except as provided in section 54,] evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Legislative changes.—The words within brackets have been substituted by Act 3 of 1891.

Scope of all actions or proceedings in which plaintiff's character is actually in issue as in actions for defamation. In a few cases, seduction, the character question of bad character.

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PART II.

On Proof.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

56. No fact of which the Court will

Fact judicially noticeable
need not be proved.

take judicial notice need be proved.

Principle.—There are certain matters which are considered too

Scope of Inquiries or proceedings in which a plaintiff's "character"

to his master. A servant may be known to none but members of his

is based upon the judgment of the majority according to which evidence of character must not be evidence of particular facts, but must be evidence

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books, and, it is applied in every part of our law. It is qualified by
another principle, also very old, and often over-topping the former in
importance—*non repert quid notum sit judici, si notum non sit in*
forma iudicis. The whole doctrine
in a cause is
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not be proved since the same is not a fact.

matters of such general notoriety as to be known to the government, and many other

judicial cognizance of their existence, or in other words they will be taken as proved. And the importance of the matters which will fall hardly be over-estimate before which it is tried, the forum is a subject of

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts :—

(1) all laws or rules having the force of law now or heretofore, in force, or hereafter to be in force, in any part of British India :

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed :

(3) Articles of War for Her Majesty's Army or Navy :

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act,* or any other law for the time being relating thereto.

Explanation.—The word "Parliament" in clauses (2) and (4) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland ;

(2) the Parliament of Great Britain ;

(3) the Parliament of England ;

(4) the Parliament of Scotland ; and

(5) the Parliament of Ireland ;

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland ;

(6) all seals of which English Courts take judicial notice - the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India :

(7) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India, or in the official Gazette of any Local Government :

(8) the existence, title and national flag of every State or Sovereign recognized by the British Crown :

(9) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette :

(10) the territories under the dominion of the British Crown :

(11) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons :

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it :

(13) the rule of the road * [on land or at sea].

In all these cases and also in all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Scope.—It will be readily seen that the subjects of judicial notice are so numerous and varied that it is next to impossible to classify them,

* These words in section 57, para. (13), were inserted by the Indian Evidence Act Amendment Act (18 of 1872), s. 5.

Clause (5).—The English Courts take judicial notice of the great privy seal (*Lord Melville's Case*, 29 How. St. Tr. 707); of royal proclamation, of the signature of the Clerk of the Parliaments (*Badische v. Levinstein*, 4 R. P. C. 470), seal of the Corporation of London (*Doe v. Mason*, 1 Esp. 53), seal of the Apothecaries Company (14 and 15 Vict. c. 97, s. 81), the seal of the Board of Trade; seals of district registries. (*Judicature Act*, 1873, S. 61), seals and signatures of Commissioners for Oaths (*Ex parte Magee*) 15 Q. B. D. 332, the seal of a notary public in any part of His Majesty's dominions, but not of a foreign notary public. *In re Davis*, (1910) W. N. 212, seals of county Courts, etc.

Cluses (8) and (7).—10 C. L. R. 469.

Clause (7)—5 Ind. Cas. 537.

Clause (8)—4 O. C. 182, 51 P. R. 1886,

Clause (8).—The Court can take judicial notice of public holidays, 59 Ind. Cas. 926, 16 N. L. R. 198.

Clause (13)—It is provided by the Indian Evidence Act that on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books of reference 1 M. L. J. 326. Under the penultimate paragraph of this section and of the first proviso of this section Taylor's Medical Jurisprudence may be referred to. 12 C. L. R. 86.

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58. No fact need be proved, in any proceeding which the parties thereto or their agents agree, to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings.

Provided that the Court may, in its discretion require the facts admitted to be proved otherwise than by such admissions.

Scope.—Any matters which have been admitted for the purpose

or to say further than that they embrace subjects, judicial, legislative, political, historical, geographical, commercial, scientific, and artistic, in addition to a wide range of matters, arising in the ordinary course of nature, or the general current of human affairs, which rest entirely upon acknowledged notoriety for their claims to judicial recognition." (*Burr Jones* § 105.) The matters enumerated in this section are by no means exhaustive. In this section certain matters are mentioned of which judicial notice should be taken. But the Courts can take judicial notice of facts not mentioned in this section. (See also *Stephen's Dig.* Art. 58.)

ice of the Laws
nor of Scotland.

and, naturally, nor that of foreign countries (Cockle's Cas. 16). The law thus noticed includes both public and private Acts of Parliament, general customs and some local customs of well known extensive application, such as Gavelkind and Borough-English customs; but generally local or particular customs must be proved (*Ibid* 16). A judge may refer to authorities to refresh his memory. So far as Indian law is concerned, the English rule should serve as a guide.

Clause (2) — As has been mentioned in clause (1) the English Court takes judicial notice of all Public Acts passed by the Parliament and since 1850 Private Acts also. It was customary, before 1850, to insert a clause in Private Acts of Parliament declaring that the same should be deemed public and be judicially noticed. The effect of this clause was to dispense with the necessity, not only of pleading the Act specially, but of producing an examined copy or a copy printed by the Printer of the Crown; a public Act requiring neither to be specially pleaded nor proved. By 13 and 14 Vict. c. 112, it was enacted: "That every Act made after the commencement of this Act shall be deemed and taken to be public Act, and shall be judicially taken notice of as such unless the contrary be expressly provided." This provision shall not be taken notice of as such unless the contrary be expressly provided.

Clause (4) — The English Courts will judicially notice the Law of England and Ireland, including the Law and Custom of Parliament, and the privileges and course of proceedings of each House of Parliament. (*Stockdale v. Hansard*, 9 A. and E. 1-2 P. and D. 1. W. N. 713-37 C. 760.)

Clayton (5).—The English Courts take indirect notice of the

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1. *See also* DAVIS, (1910) W. N. 217; seals of county Courts, etc.

Cluses (6) and (7) —to C. L. R. 469.

Clause (7)—5 Ind. Cas. 537.

CLASSE (8).—4 O. C. 182; 5^e P. R. 1886.

Clause (d).—The Court can take judicial notice of public holidays.
59 Ind. Cas 926; 16 N. L. R 198.

Clause (13) — that on all
may resort
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C. L. R. 86. Medical Jurisprudence may be referred to 12

The statement by H. M. G. ... General for existence of Majesty the ... 46 Ind.

Caso.—13 Ind. Cas. 599

58. No fact need be proved in any proceeding which the

Facts admitted need not be proved

Provided that the Court may, in its discretion require the facts admitted to be proved otherwise than by such admissions.

Scope.—Any matters which have been admitted for the purpose of the trial need not be proved. Admissions that—

pleadings ; (b) on notice to 'admit' facts or documents, served by one party on another ; (c) in answer to interrogatories administered by one party to another ; (d) by solicitor or Counsel, in the exercise of his discretion, at or before trial. (*Cockle's Cas.* 37.) It should, however be noted here that express admissions are only allowed in civil cases. They are not allowed in criminal cases, unless a plea of "guilty" can be treated as an admission.

Under this section no admission is binding on the party making it at the hearing or on the jury, unless it is proved that they are deemed to have made it. (1901, Vol. II. 379.) In criminal cases, the defendant, proof of admission is by reference to the pleadings. If the admission is included in the plaint or written statement, and its terms and execution are admitted on the record by the pleadings it is not necessary to prove it or put it in evidence and its non-registration is immaterial. U. B. R. 1904, 3rd Qr. Evidence 1. See also 9 Ind. Cas. 470 ; 12 Bom. L. R. 712 ; 11 Ind. Cas. 850 ; U. B. R. 1907, Ev. 1 ; 9 Ind. Cas. 970.

An admission made at the hearing of a case, or an admission by the counsel, is not binding on the party making it, unless it is proved that they are deemed to have made it. (1901, Vol. II. 379.) In criminal cases, the defendant, proof of admission is by reference to the pleadings. If the admission is included in the plaint or written statement, and its terms and execution are admitted on the record by the pleadings it is not necessary to prove it or put it in evidence and its non-registration is immaterial. U. B. R. 1904, 3rd Qr. Evidence 1. See also 9 Ind. Cas. 470 ; 12 Bom. L. R. 712 ; 11 Ind. Cas. 850 ; U. B. R. 1907, Ev. 1 ; 9 Ind. Cas. 970.

Cases.—2 Loh. L. J. 253 ; 20 M. L. J. 44 ; 42 B. 352 ; 1918 M. W. N. 853.

CHAPTER IV.

OF ORAL EVIDENCE.

Proof of facts by oral evidence. 59. All facts, except the contents of documents, may be proved by oral evidence.

Scope.—All facts except the contents of a document may be proved by oral evidence. The sworn testimony of a witness should not be ignored or disbelieved unless discredited or broken down by contrary proof, or

by matter elicited in cross-examination, which may tend to show that the persons giving such evidence have deliberately perjured themselves, or have made a false and concocted statement, or unless the evidence is, upon the face of it, so absurd or improbable that no person ought to believe it. A. W. N. 1897, 1899, 26 A 108 (P. C.) = 31 L. A. 38. It is not correct to hold that, for the determination of the merits of a case, oral testimony unsupported by documentary evidence is of no value. 18 W. R. 328. The evidence of one witness, if reliable, is not insufficient to prove a fact. 11 W. R. 94.

Discrepancies in evidence must be carefully considered and their effect allowed for, but when they can be fairly reconciled by explanation or can be naturally and reasonably accounted for, evidence, otherwise trustworthy, cannot be put aside, although its value may be *pro tanto* impaired, solely because of their concurrence. U. B. R. (1897-1901) Vol. I, 162.

Oral evidence must be direct. 60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also, that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Direct.—The term is used in two senses; as evidence of fact in issue; e., opposed to circumstantial evidence and evidence actually perceived by a witness with one of his senses, or of an

actually held by himself (as distinguished from hearsay evidence) (*Cockle's Cas.* 3).

.. Scope.—Direct evidence, as opposed to hearsay evidence is generally required. The evidence must be given by a witness who perceives directly by one of his senses the fact to which he deposes. Hearsay evidence, that is the evidence of a witness as to a fact which he did not himself perceive, but which he proves was stated by any other person, is not admissible, except in a few special cases (*Stokbart v. Dryden*, 5 I. J. Ev. 218; *Cockle Cas.* 149); see also 12 B. L. R. App. 18; 1924 Rang 363; 1924 Lah. 733.

.. *Intention.*—The intention of the Act is to prevent the tendency of such evidence to protract legal inquiries, and to encourage

It was not intended, by this section to exclude the circumstantial evidence of things which can be seen, heard or felt. 12 B. L. R. App. 18.

.. *Three accused.*—The section does not apply to three accused to commit or produced the hearsay to commit officers to first three

Cases.—22 C. W. N. 75; 33 M. 466; 4 Ind. Cas. 579.

.. *Intention.*—The intention of the Act is to prevent the tendency of such evidence to protract legal inquiries, and to encourage

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Scope.—There are two methods of proving a document either by primary or by secondary evidence. When primary evidence is available secondary evidence is not admissible. Where a copy of a document is admitted in the Court below without any objection, objection to the admissibility of the same should not be allowed in the appellate Court.
31 C. 155

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Illustration.—Where a document is executed in several parts, each part is primary evidence of the contents of the original.

Illustration.

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Explanation 1.—Where a mortgage deed has been executed in

Secondary evidence.

63. Secondary evidence means and includes—

(1) certified copies given under the provisions contained;

Evidence—7

- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies ;
- (3) copies made from or compared with the original ;
- (4) counterparts of documents as against the parties who did not execute them ;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

evidence of its contents
is proved that the thing

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Scope.—This section is exhaustive of the kinds of secondary evidence admissible under the Act. 43 M. L. J. 37 ; see also 10 Ind. Cas. 852

Clause (1)—Certified copies mean copies signed and certified as correct by officials having custody of originals. They are allowed as evidence by various statutes. (*Cockle Cas.* 323.)

Clause (2)—Vide Illustrations (b) and (c).

Clause (3)—This clause includes copies proved by oral evidence to have been examined with and to correspond with the originals. The

copy which another person, not
All public documents may be

office copies are generally used
so 1924 Nag. 375 ; 20 L. W. 719

Clause (4)—"Counterparts" or copies executed by certain parties only, are primary evidence against such parties only. *Cockle Cas.* 308.

Clause (5)—66 Ind. Cas. 557 ; 36 Ind. Cas. 696 "Seen" includes also "read over." 73 Ind. Cas. 654. See also 71 Ind. Cas. 654 ; 3 Bur. L. J. 172 ; 22 A. L. J. 864—80 Ind. Cas. 939—(1924) All 792.

Illustration (c)—A copy of a copy is inadmissible in evidence 54 Ind. Cas. 941—1 P. L. T. 47 ; 7 A. 738.

Cases.—No secondary evidence can be given of a document, which is not proved to have been written by the accused or to have ever existed. *A. L. J. 302=12 Cr. L. J. 250=10 Ind. Cas. 852.* It is not open to the appellate Court to consider whether the provisions as to secondary evidence

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Proof of documents by primary evidence.

Scope.—Secondary evidence is not admissible where loss of primary evidence is not proved. *U. B. R. (1892-1896).* As regards documents, the best evidence in the possession or power of the party tendering it must be given. Generally, the best evidence of a document is the original document, which is "primary evidence" of its contents. Such original must be produced unless its absence is accounted for: *Macdonnell v. Evans*, 21 L. J. C. P. 141. The original document must be produced whenever there is a question as to its contents or terms, unless for special reasons

Cases in which secondary evidence relating to documents may be given.

given of the existence, condition or contents of a document in the following cases:—

- (a) when the original is shown or appears to be in the possession or power—
 - of the person against whom the document is sought to be proved, or
 - of any person out of reach of, or not subject to, the process of the Court, or
 - of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;
- (d) when the original is of such a nature as not to be easily moveable ;
- (e) when the original is a public document within the meaning of section 74 ;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d) any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Clause (a)—Secondary evidence of a document is admissible when the original is in the possession of an adverse or opposite party, who refuses to produce it after a proper notice to produce. The object of a

produce it, and who refuses to do so, either when summoned as a party with a "*sub-pœna duces tecum*" or when sworn as a witness without a *sub-pœna* if he admits that he has the document in Court. *Mills v. Odby*, 6 C. and P. 723; *Cockle Cas.* 316. But where he can be compelled to produce the document, secondary evidence is not competent. *R. v. Inhabitants of Leanfauthly*, 23 L. J. M. C. 33—*Cockle Cas.* 317. The

law requires that a party shall do all that he can legally do to compel production of a document by a stranger before he puts in secondary evidence against an opponent *Cockle Cas.* 318, see also 12 Ind. Cas. 861; 31 Ind. Cas. 893

Cases.—L. R. 3 A. 8, 1922 (Bom.) 177, 3 Lah. 282; 67 I. C. 237; 4 Lah. L. J. 418; 66 Ind. Cas. 360; 24 O. C. 272; 62 Ind. Cas. 60; 62 Ind. Cas. 444, 23 Bom. L. R. 506, 49 Ind. Cas. 507; 41 A. 592; 35 Ind. Cas. 328, 34 Ind. Cas. 153, 23 C. L. J. 112; 12 Ind. Cas. 861; L. R. 4 A. 201, 71 Ind. Cas. 825, 1923 Rang. 113, L. R. 4 A. 152; 71 Ind. Cas. 568; 16 C. 753; 26 C. 53.

Clause (c).—Secondary evidence of the contents of a document is admissible when the original is lost. U. B. R. (1897—1901) Vol. II. 382. But it must be shown that proper search has been made for it. *What . . . the document.*

or a useless
Cas. 318).
L. R. 3 A.

539, see also 67 Ind. Cas. 565, 4 Lah. 416, 49 Ind. Cas. 1006, 32 Ind. Cas. 399, 45 Ind. Cas. 888

Clause (d).—Secondary evidence of a document is admissible where the original cannot be brought to Court, because it is physically impossible to bring the original, as in the case of writings on walls, tombstone and the like. *Mortimer v McCallan*, 4 Jur. 172 = *Cockle Cas.* 321.

Clause (e).—Secondary evidence of a document is admissible where the original cannot be
or require, the original
convenience, as in the
ments" including the b
McCallan, 4 Jur. 172 =

existence no secondary evidence other than a certified copy is admissible. 63 P. R. 1878. See also 17 C. P. L. R. 161, 2 Bom. L. R. 533, 10 C. P. L. R. 59, 34 C. 293, 22 C. W. N. 742.

Clause (f).—A registration office copy of sale deed is admissible. 11 Ind. Cas. 50, 36 Ind. Cas. 673.

Clause (g).—Vide 2 Lah. L. J. 714; 6 M. 80; 5 C. 568.

66. Secondary evidence of the contents of the documents

Rules as to notice to referred to in section 65, clause (a), shall
produce. not be given unless the party proposing to

give such secondary evidence has pre
viously given to the party in whose possession or power the docu
ment is [or to his attorney or pleader,] such notice to . . .

as is prescribed by law; and if no notice is
then such notice as the Court considers reasonable.
circumstances of the case ;

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

- (1) when the document to be proved is itself a notice;
- (2) when from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Legislative Changes.—The words within brackets have been inserted by Act 18 of 1872.

Scope.—Secondary evidence of a document is admissible when the original is in possession of an adverse or opposite party, who refuses to produce it after proper notice to produce *Dwyer v. Collins*, 21 L. J. Ex. 225. See also 34 Cr. L. J. 305. A Court can in exercise of the

67. If a document is alleged to be signed or to have been

Proof of signature and handwriting of person alleged to have signed or written document produced. written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Scope.—To prove the execution of a bill of sale executed in their favour by the plaintiffs' father, the defendant called a *Kasi* who deposed that the vendor came before him accompanied by witnesses, and acknowledged the execution of the deed, which was then registered. The lower appellate Court found it was sufficiently proved. On special appeal to the High Court it was contended that the execution was not sufficiently proved under this section. *Held*, that the proof of execution was sufficient; direct evidence of the handwriting of the executant not necessary under s. 67. 12 B. L. R. App 16 This section does

attestors was dead and the other either denied or did not recollect the execution of the document, the execution of the same can be proved by other evidence. 1 Pat. 154. The mere fact that the attesting witnesses repudiate their signatures or make statement suggesting that they attested at the instance of persons other than the executants or in their absence, does not invalidate the document, if it can be proved by evidence of a reliable character that they have given false testimony. 48 Ind. Cas. 538. See 48 Ind. Cas. 624; 41 All. 294. The endorsements made by the registering officer amount to some *prima facie* evidence at least under this section, that the executant himself and as one representing or personating him appeared before the registering officer and that upon reference to the document, he complied with the provisions. It becomes admissible under execution, and there is nothing treating it as sufficient by its R 197.

Proof of document not required by law to be attested. 72. An attested document not required by law to be attested may be proved if it was unattested.

CANON.—A suit was brought for sale of land. It was found that the mortgage law and the suit was dismissed under the mortgage and asked. *Held*, that the document not s. 68 of the Act did not apply, and that it was admissible in evidence under this section. 13 A. L. J. 553; 29 Ind. Cas. 363.

73 In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write the words or figures for the purpose of enabling the Court to compare the words or figures to written with any words or figures alleged to have been written by such persons.

This section applies also, with any necessary modifications to finger-impression.

Legislative changes.—The last para was added by Act 5 of 1877.

attestors was dead and the other either denied or did not recollect the execution of the document, the execution of the same can be proved by other evidence. 1 Pat. 154. The mere fact that the attesting witnesses repudiate their signatures or make statement suggesting that they attested at the instance of persons other than the executant or in their absence, does not invalidate the document, if it can be proved by evidence of a reliable character that they have given false testimony. 48 Ind. Cas. 538. See 48 Ind. Cas. 624; 41 All. 230. The endorsements made by the registering officer amount to some *prima facie* evidence at least under this section, that the executant himself and as one representing or personating him appeared before the registering officer and that upon being examined by the officer with reference to the document, he admitted he had executed it. Subject to compliance with the provisions of s. 68 an admission of execution, once it becomes admissible under this section, is good evidence in proof of execution, and there is nothing in law which prohibits a Court from treating it as sufficient by itself to establish the fact admitted. 13 N. L. R 197.

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

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Legislative changes.—The last para was added by Act 5 of 1893

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s. 68 of the Act did not apply, and that it was admissible in evidence under this section. 13 A. L. J. 553; 29 Ind. Cas. 363.

73 In order to ascertain whether a signature, writing or seal

Comparison of signature, writing or seal with others admitted or proved.

is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such persons.

This section applies also, with any necessary modifications to finger-impression.

Legislative changes.—The last para was added by Act 5 of 1890

Scope—Under this section it is not necessary that the writing which is in dispute must itself be in terms express or indicate that it was written by the person to whom the writing is attributed. The word "purports" in the section means "alleged" 14 Bom. L. R. 310—15 Ind Cas. 649. See also Rat. U'n. Cr. C. 491, see also 48 Ind. Cas. 68—35 M. L. J. 698. Comparison of signatures is on-
Although where there is no other
hazardous and inconclusive, it
base the conclusion on such proc
would have no power to set asi
11 M. L. T. 424—14 Ind Cas
151 (P.C.) 62 Ind Cas 882

Finger-impression.—A Court has power to direct an accused person to make a finger-impression and the same is admissible in evidence. So also is the evidence of an expert concerning finger-impression. 2 Bur. L. J. 270, 1 Rang. 759 (F. B.), 1924 Rang. 115, 17 Cr. L. J. 616—35 Ind. Cas. 492

PUBLIC DOCUMENTS.

Public documents

74. The following documents are public documents;—

(1) documents forming the acts or records of the acts—

(i) of the government

(ii)

(iii);

judicial and executive
any other part of Her

Majesty's dominions or of a foreign country;

(2) Public records kept in British India of private documents.

Cases.—Census Registers are not public documents within the meaning of this section. 6 Bom. L. R. 535. All the papers filed in a suit,

Municipal proceedings are also public documents. 19 A. 293; but see 30 Ind Cas 643—16 Cr. L. J. 659.

of Cylon is not a public
loan Register of the
public document. 31 C.
kept under the Land

Registration Acts are public documents and admissible in evidence s. Pat, 839.

Private documents.

75. All other documents are private.

Private documents.—The list of public documents has been given s. 74. That list is complete. All other documents besides those mentioned in s. 74 are private documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person, on demand, a copy of it on payment of the legal fee therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificates shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Notes.—A right to inspect public documents is, however, assumed in this section of the Evidence Act. 20 M. 189. Ss. 76 and 77 refer to public documents, and are not applicable to *lobalas*. 22 W. R. 335. The contents of the *jama bandi* can be proved by the production of certified copies furnished as provided by ss. 76 and 77 of the Act. J. R. 3 A. 386 (Rev.)

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Scopo.—Public documents can be proved by producing certified copies of the same. 3 O. C. 205. A certified copy of the order of a Court passed upon a compromise should be received in evidence, if offered in

Proof of other official documents.

78. The following public documents may be proved as follows :—

- (1) Acts, orders or notifications of the Executive Government of British India in any of its departments or of any

Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government :

(2) The proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or, purporting to be printed by the Queen's Printer :

(4) The Acts of the Executive or the proceedings of the

or commonly re-
under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council :

(5) The
ed by the authority of such body :

(6) Public documents of any other class in a foreign country,—
by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Scope.—Besides certified copies there are special ways of proving certain public documents which are pointed out in this section (*Cunningham v. 170*)

Clause (5)—30 Ind. Cas. 643—16 Cr. L. J. 659 ; 17 C. W. N. 531—18 Ind. Cas. 651.

Clause (8)—15 C. W. N. 1053—14 C. L. J. 375.

Registration Acts are public documents and admissible in evidence
2 Pat, 839.

Private documents. 75. 'All other documents are private.

Private documents.—The list of public documents has been given
s. 74 That list is complete. All other documents besides those mentioned
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76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of the original.

whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Notes.—A right to inspect public documents is, however, assumed in this section of the Evidence Act. 20 M. 189. Ss. 76 and 77 refer to public documents, and are not applicable to *kobalas*. 22 W. R. 355. The contents of the *jama bandi* can be proved by the production of certified copies furnished as provided by ss. 76 and 77 of the Act L. R. 3 A. 386 (Rev.).

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Scope.—Public documents can be proved by producing certified copies of the same. 30 O. C. 205. A certified copy of the order of a Court passed upon a compromise should be received in evidence, if offered in proof of the compromise, under this section, as it is a copy of a document forming the record of an act of a public judicial officer. 1 A. L. J. 362. See also 22 W. R. 355, 14 C. 486 (P. C.); 10 C. L. R. 469; 10 C. 608.

Proof of other official documents. 78. The following public documents may be proved as follows:—

- (i) Acts, orders or notifications of the Executive Government of British India in any of its departments or of any

Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government :

(2) The proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government :

(3) Proclamations, order or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or, purporting to be printed by the Queen's Printer :

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council :

(5) The ... of ...

ed by the authority of such body :

(6) Public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country

Scope.—Besides certified copies there are special ways of proving certain public documents which are pointed out in this section (*Cunningham. Ev. 170.*)

Clause (5)—30 Ind. Cas. 643—16 Cr. L. J. 659 ; 17 C. W. N. 531—18 Ind. Cas. 651.

Clause (6)—15 C. W. N. 1053—14 C. L. J. 375.

no more necessary in an Indian Court than it would be in an English Court to prove the seal or signature or to prove that the person signing it held the office which he claims. This is founded on the Evidence Act, 1872 (14 and 15) Vict. c. 99, the effect of which is to make admissible in evidence any document or writing which is proved to be genuine, and which is shown to be a document or writing of the nature and kind which is admissible in evidence in England and Ireland. (*Woodroffe Ev.*)

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any case must be proved to be accurate.

Presumption as to maps or plans made by authority of Government.

Principle.—The general ground of reception is that such documents contain the results of inquiries made under competent public authority and concerning matters in which the public are interested. *Phipson, J.*

Accuracy.—Accuracy of Amin's map means accuracy of drawing and measurement. It has no reference to correctness of boundaries etc., in relation to rights of parties. 23 W. R. 179. Government maps are admissible under this section. 9 M. L. T. 315. But Government maps made for its private use are not admissible in evidence against private parties for proving the character or tenure of the lands described therein. 9 C. 741. A *thak bust* map is presumed to be accurate under this section. 23 W. R. 510; 5 C. 522; 30 C. 291 (P. C.)=7 C. N. 193; 34 C. L. J. 205.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to collections of laws and reports of decisions.

Scope.—The general rule, as to the proof of foreign laws, is that the law which is written, that is, statute law, must be proved by a copy properly authenticated; and that the unwritten law must be proved by the testimony of competent persons. *Ex parte Pether* in fact as to the exclusive mode of getting at this evidence, for we have with matters of knowledge offered to us. We have the witness, and he states the law.

which he says is correctly laid down in these books. The books are

the unwritten law of a sister state or foreign country, as are also
 printed and published books of reports of decisions of the Courts of
 a state or country, or proved to be commonly admitted in such
 courts."

85. The Court shall presume that every document purport-
 ing to be a power-of-attorney, as to
 the signature of attorney.

gistrate, British Consul or vice-Consul, or representative of
 Her Majesty, or of the Government of India, was so executed and
 authenticated.

Cases.—A power-of-attorney given by the executors under a will
 administration,
 Notary Public
 21 M. 492. In
 power-of-attorney.

it be executed before or be authenticated by one of the persons
 mentioned in the section 16 C 776 This section is mandatory. When
 document purporting to be a power-of-attorney and to have been
 executed before, and authenticated by, a Notary Public is produced
 before the Court, an affidavit of identification as to the person purporting
 to make the power-of-attorney being the person named therein is
 necessary 9 C W. N. 986=33 C 625. The language of the section
 does not warrant the assumption that the provision contained in this
 section is of an exhaustive character and that other legal modes of
 giving the execution of a power-of-attorney are not admissible 21 M.
 1. A registered power-of-attorney is admissible in evidence to prove
 agency under this section and unless its genuineness is suspected
 in which case proof of its execution can be called for, the agent should
 be allowed to appear and act within the meaning of O. III rule 2 of
 P. Code 33 Ind Cas 661

86. The Court may presume that any document purporting
 to be a certified copy of any judicial
 record of any country not forming part
 of Her Majesty's dominions is genuine
 and accurate, if the document purports
 to be certified in any manner which is certified by any re-
 cord of Her Majesty or of the Government of India [in

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to maps or plans made by authority of Government.

Principle.—The general ground of reception is that such documents contain the results of inquiries made under competent public authority and concerning matters in which the public are interested. *Phipson, 313*

Accuracy.—Accuracy of Amin's map means accuracy of drawing and measurement. It has no reference to correctness of boundaries etc., in relation to rights of parties. 25 W. R. 179. Government map is admissible under this section. 9 M. L. T. 415. But Government *chittas* made for its private use are not admissible in evidence against private parties for proving the character or tenure of the lands described therein. 9 C. 741. A *thak bust* map is presumed to be accurate under this section. 22 W. R. 519, 5 C. 822; 30 C. 291 (P. C.) = 7 C. W. N. 193; 34 C. L. J. 205.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to collections of laws and reports of decisions.

Scope.—The general rule, as to the proof of foreign laws, is that the law which is written, that is, statute law, must be proved by a copy properly authenticated; and that the unwritten law must be proved by the testimony of experts, that is, by those acquainted with the law. *Burr Jones, § 502*. Lord Chief Justice Denham observed in *Sussex Peerage Case*, 11 Clark and F. 85. "There does not appear to be in fact any real difference of opinion; there is no question raised here as to any exclusive mode of getting at this evidence, for we have both materials of knowledge offered to us. We have the witness, and he states the law."

which he says is correctly laid down in these books. The books are produced, but the witness describes them as authoritative, and explains them by his knowledge of the actual practice of the law. A skilful and scientific man must state what the law is, but may refer to books and statutes to assist him in so doing." *California Civil Pro. Code* lays down: "The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of a sister state or foreign country, as are also printed and published books of reports of decisions of the Courts of such state or country, or proved to be commonly admitted in such Courts."

85 The Court shall presume that every document purporting to be a power of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Cases.—A power-of-attorney given by the executors under a will administration, Notary Public 21 M. 492. In power-of-attorney must be executed before or be authenticated by one of the persons mentioned in the section 16 C 776. This section is mandatory. When a document purporting to be a power-of-attorney and to have been executed before, and authenticated by, a Notary Public is produced before the Court, an affidavit of identification as to the person purporting to make the power-of-attorney being the person named therein is unnecessary 9 C W. N. 986—33 C 625. The language of the section does not warrant the assumption that the provision contained in this section is of an exhaustive character and that other legal modes of proving the execution of a power-of-attorney are not admissible. 21 M. 492. A registered power-of-attorney is admissible in evidence to prove the agency under this section and unless its genuineness is suspected in which case proof of its execution can be called for, the agent should be allowed to appear and act within the meaning of O. III rule 2 of C. P. Code 33 Ind Cas 661.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India [in

such country to be the manner commonly in use in that country for the certification of copies of judicial records.

[An officer who, with respect to any territory or place not forming part of Her Majesty's dominions is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place].

Legislative changes.—The words within brackets in para 1, have been substituted by Act 3 of 1891. The last para has been substituted by Act V of 1899, s. 4.

Scope—This section lays down that if a copy of a foreign judicial record purports to be certified in a given way, the Court may presume it to be genuine and accurate. The section, however, does not exclude other proof. 2 Bom. L. R. 562; 27 C. 639=4 C. W. N. 429 (P. C.); 8 Mad Jur. 14; 22 W. R. 303. The certificate required by law under this section cannot be dispensed with here because it can be obtained at any time. 5 Lah. 105.

Cases.—It is doubtful whether the notification in the Calcutta Gazette of the 8th April, 1879, by the then Deputy Commissioner of Cooch Behar, regarding the mode of certifying copies of judicial records as correct copies, after the Governor General in Council had, under s. 434 of the Civil Pro. Code, notified that decrees of Cooch Behar Courts might be executed as if they were decrees of British Indian Courts, was a compliance with the provisions of this section of the Evidence Act, when there was a representative of the Government of India resident in Cooch Behar. 14 C. 546.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Scope.—A Court is justified in referring to books published long before the suit, in which the usage of the institution and its history are described both being matters relevant to the suit. 15 M. 241.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports

Presumption as to telegraphic messages.

to be sent ; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Scope.—This section allows the Courts to treat telegraphic messages received, as if they were the original sent, with the exception, that a presumption is not to be made as to the person by whom they were delivered for transmission and, unless the non-production of the original is accounted for, secondary evidence of their contents is inadmissible. 41 B R. 1847-19011 Vol II. 384. The Court is forbidden by the express provisions of this section to make any presumption as to the person by whom the telegram was sent. 42 M 885—37 M. 1. J. 81.

89. The Court shall presume that every document, called for and not produced after notice to execution, etc., of documents not produced, was attested, stamped and executed in the manner required by law.

Notes.—Where the attesting witnesses of a mortgage deed were dead, where it was proved that the mortgagor had executed the deed and that it had been returned to him at the time of the sale of the mortgaged property to the mortgagee and where the mortgagor failed to produce the deed before Court, though called upon to do so: *Held* that the execution of the mortgage deed was in view of this section of the Evidence Act satisfactorily established irrespective of the provisions of s. 568 34 Ind Cas. 168.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation—Documents are said to be in proper custody 'if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his title to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

Scope.—A document thirty years old *i.e.* a document dated thirty

as an ancient
The rule that
themselves, or in
applies only to
those coming from proper custody; that is, not necessarily from the
strictly legal or most proper custody but from any custody consistent
reason-

Bishop
333. Under this section the Court :
document which was not thirty years old either on the date of the suit
or on the date of its production but was thirty years old on the date
when arguments were heard. 54 Ind. Cas. 368; see also 33 C. L. J. 382.
60 Ind. Cas. 96; 41 M. L. J. 310; 57 Ind. Cas. 786; 61 Ind. Cas. 959; 61
Ind. Cas. 125; 52 Ind. Cas. 314; 49 Ind. Cas. 419; 15 N. L. R. 192; 6 O.
L. J. 311; 26 Ind. Cas. 117; 13 A. L. J. 921; 2 L. W. 509; 5 P. W. R. 1915.

No presumption can be made in favour of a copy of a document
under this section 16 N. L. R. 106—55 Ind. Cas. 426; *contra*, 16 L. W.
462; 16 L. W. 839; 29 C. L. J. 577. The fact that a document is more
than 30 years old and is registered and that the genuineness of the
signature of its executant on it is admitted may go to raise a presumption

But such a presumption does not exclude the
document is set up to rebut that
as not properly attested and was
501. It is open to a party when
y on the presumption under this
section and also on its proof and the Court may presume a deed to be
genuine even though it is not satisfied with the evidence tendered to
prove its execution. 49 Ind. Cas. 419. In the case of a copy of a
document 30 years old, this section empowers the Court to presume that
the copy is in the hand-writing of the person in whose hand-writing it
presume under

genuine. 35 Ind
whether it will
the evidence
first instance
in the case is before it. 10 A. L. J. 87. Where the
presumed a document to be genuine under this
ent f — first appellate Court to hold that it s

to be genuine and to reject it without calling for further proof of the same. 22 M. L. J. 217 = 14 Ind. Cas. 394.

Cases.—75 Ind. Cas. 57, 73 Ind. Cas. 66; 32 M. L. T. (H. C.) 802; 50 C. 525, 75 Ind. Cas. 66; 1923 Bom. 364, 1923 Bom. 293; 46 Mad. 92; 1923 A. 420 (2), 27 C. W. N. 964; 9 O. & A. L. R. 893; 13 A. L. J. 921, 19 O. C. 92, 19 O. C. 121; 97 P. W. R. 1916 = 34 Ind. Cas. 163.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills [admitted to probate in British India] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and in cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall preclude the admission of oral evidence as to the

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

Scope.—A document thirty years old *i.e.* a document dated thirty years back, proves itself, if produced from proper custody as an ancient document. *Anderson v. Weston*, 9 L. J. C. P. 194. The rule that "ancient documents" or those thirty years old, prove themselves, or in other words, are presumed to have been duly executed applies only to those coming from proper custody, that is, not necessarily from the strictly legal or most proper custody but from any custody consistent with reason—*Bishop v. The Cas.* 111; 112; 113; 114; 115; 116; 117; 118; 119; 120; 121; 122; 123; 124; 125; 126; 127; 128; 129; 130; 131; 132; 133; 134; 135; 136; 137; 138; 139; 140; 141; 142; 143; 144; 145; 146; 147; 148; 149; 150; 151; 152; 153; 154; 155; 156; 157; 158; 159; 160; 161; 162; 163; 164; 165; 166; 167; 168; 169; 170; 171; 172; 173; 174; 175; 176; 177; 178; 179; 180; 181; 182; 183; 184; 185; 186; 187; 188; 189; 190; 191; 192; 193; 194; 195; 196; 197; 198; 199; 200; 201; 202; 203; 204; 205; 206; 207; 208; 209; 210; 211; 212; 213; 214; 215; 216; 217; 218; 219; 220; 221; 222; 223; 224; 225; 226; 227; 228; 229; 230; 231; 232; 233; 234; 235; 236; 237; 238; 239; 240; 241; 242; 243; 244; 245; 246; 247; 248; 249; 250; 251; 252; 253; 254; 255; 256; 257; 258; 259; 260; 261; 262; 263; 264; 265; 266; 267; 268; 269; 270; 271; 272; 273; 274; 275; 276; 277; 278; 279; 280; 281; 282; 283; 284; 285; 286; 287; 288; 289; 290; 291; 292; 293; 294; 295; 296; 297; 298; 299; 300; 301; 302; 303; 304; 305; 306; 307; 308; 309; 310; 311; 312; 313; 314; 315; 316; 317; 318; 319; 320; 321; 322; 323; 324; 325; 326; 327; 328; 329; 330; 331; 332; 333; 334; 335; 336; 337; 338; 339; 340; 341; 342; 343; 344; 345; 346; 347; 348; 349; 350; 351; 352; 353; 354; 355; 356; 357; 358; 359; 360; 361; 362; 363; 364; 365; 366; 367; 368; 369; 370; 371; 372; 373; 374; 375; 376; 377; 378; 379; 380; 381; 382; 383; 384; 385; 386; 387; 388; 389; 390; 391; 392; 393; 394; 395; 396; 397; 398; 399; 400; 401; 402; 403; 404; 405; 406; 407; 408; 409; 410; 411; 412; 413; 414; 415; 416; 417; 418; 419; 420; 421; 422; 423; 424; 425; 426; 427; 428; 429; 430; 431; 432; 433; 434; 435; 436; 437; 438; 439; 440; 441; 442; 443; 444; 445; 446; 447; 448; 449; 450; 451; 452; 453; 454; 455; 456; 457; 458; 459; 460; 461; 462; 463; 464; 465; 466; 467; 468; 469; 470; 471; 472; 473; 474; 475; 476; 477; 478; 479; 480; 481; 482; 483; 484; 485; 486; 487; 488; 489; 490; 491; 492; 493; 494; 495; 496; 497; 498; 499; 500; 501; 502; 503; 504; 505; 506; 507; 508; 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CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given to proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills [admitted to probate in British India] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and in cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other, indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Legislative Changes.—The words within brackets in exception 2, were substituted for the words "under the Indian Succession Act" by the Indian Evidence Act, Amendment Act, 1872 (18 of 1872) s. 7.

Scope.—The general rule laid down in this section is that when the terms of a contract have been reduced to writing, no evidence shall be

terms of the

45.

Principle.—This rule is founded on the best evidence principle. (*Phipson Ev.* 506)

Contract.—It seems more probable that the word "contract" was employed in a wide and general sense with reference to the whole of the transaction or transactions between all the parties in their several respective relations. U. B. R (1892—1896) Vol II. 354.

Grant.—It is doubtful whether the word 'grant' in this section means a grant of property only or refers to other grants also. 27 M. 30.

Application.—Where a private transaction is required by law to be in writing, e.g. a will, contract under the statute of frauds, or marine insurance, or where a contract, grant or other disposition of property,

though not so required, has been reduced to writing by agreement of the parties and is intended to be complete and operative as such,—no extrinsic evidence is admissible to supersede the document, or to prove the transaction independently. (*Phipson Ex. 508*). This rule is applicable even when the real terms

although the document is not registered, it is independent of the registration, and is taken on a certain date, or, when also signed, or, when a promissory note, oral or written, between strangers, the terms of the transaction can only be shown by the production of the document itself and not by oral testimony. (*Phipson Ev.* 509)

Exception (1)—The law assumes that any act done in public or any formal act privately performed will be done in due form by the person authorised to perform it. *Harris v Knight*, 15 P. D. 170

Exception (2).—The probate of a will is in the nature of a public document, for it records the act of the Court in admitting the will to probate. Moreover, a copy of the will can be seen by any person at the Court on payment of requisite fee. The title of an executor and it is a copy of the will sealed with the Court and attached to a certificate which is registered, and that administration has been granted to one or more of the executors.

Explanation (1)—Vide illustration (a)

Explanation (2) – Vide illustration (c)

Explanation (3)—Vide illustrations (d) and (e)—Extrinsic evidence is sometimes admissible to prove the existence as distinguished from the terms of a transaction or relationship which has been reduced to writing. Payments of money may be proved by oral testimony, although a receipt for the same exists. 7 W. R. 384, 4 B 126; 1 A. 442; 3 M. 533. 27 C 951 (P. C.)=4 C. W. N. 631.

92. When the terms of any such contract, grant or other

Exclusion of evidence of oral agreement. disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

*Proviso (x).—*Any fact may be proved which would invalidate any document, or which would entitle any person to any decree

or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or, mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved :

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract,

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(a) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact, that at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

contract of obtaining evidence of any oral agreement varying its terms
 d in the contract
 period is not so
 ct as to make it
 it oral agreement
 re document is a
 registered one. 1924 Cal. 38. In cases of patent ambiguity no evidence
 can be given to supply the defect. 80 Ind. Cas. 944. But parol evidence
 is admissible for the purpose of explaining latent ambiguities. *Doe v.*
Needs, 6 L. J. Ex. 59. The view that there has been introduced into the
 law of India such a radical change in the Law of Evidence as would have
 the effect of excluding from the class of mortgages many transactions
 which before the Evidence Act would have been held to be within that
 clause is not correct. 47 M. 429 (P. C. J.). Evidence of acts and conduct
 of parties to show that certain terms of a contract were never intended
 to be acted upon from the beginning is not precluded by this section.
 27 C. W. N. 336.

Cases—4 Pat. L. T. 577; 36 Ind. Cas. 7.

Exclusion of evidence to
 explain or amend ambigu-
 ous document.

93. When the language used in a
 document is, on its face, ambiguous or
 defective, evidence may not be given of
 facts which would show its meaning or
 supply its defects.

Illustrations.

(a) A agrees, in writing, to sell a horse to B for Rs. 1,000 or
 Rs. 1,500.

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circumstances, and the maxim is *quod ex facto oritur ambiguum veri-
 ficatione facti tollitur.*" *Norton Ev* 279.

Scope.—Parol evidence is admissible to show the subject matter of which, or the persons to whom, a written document applies or refers; and for such purpose to explain latent ambiguities. Such parol evidence may be of the surrounding circumstances or apparently, of statements of intention made by parties to a document. *Doe v. Nicks* (11 Ex. 59). But parol evidence is not admissible to supply verbal blanks in written documents, or to explain the meaning of words or expressions so defective or ambiguous as to be meaningless in themselves, by showing what a party to such document intended to say. *Dayles v. Attorney General*, 2 At. 239. See 1. A. 275. 35 Cr. L. J. 87.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Ram pur containing too bighas." A has an estate at Rampur containing too bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Scope.—"This section falls under the more general rule of English law that where the words of a document are free from ambiguity, and external circumstances do not create any doubt or difficulty as to the proper application of the words, the document is to be construed according to the plain and common meaning of the words, and that, in such case, extrinsic evidence, for the purpose of explaining the document according to the supposed intention of the parties is inadmissible."

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Scope.—This section and sections 96 and 97 lay down the rule as regards latent ambiguities. Parol evidence is admissible to show the subject-matter to which, or the persons to whom, a written instrument applies or refers; and for such purpose to explain the latent ambiguities. Such parol evidence may be of the surrounding circumstances, or apparently, of statements of intention made by parties to a document. *Doe v. Needs*, 6 L. J. Ex. 59; *Cockle Cas.* 355. Where the description of property sold is such that one portion of it applies to the whole of the

S 42, 71 Ind. Cas 589.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations

(a) A agrees to sell to B, for Rs 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Deccan or Haidarabad in Sind was meant.

Scope.—When there are two or more persons or things, and each of them exactly answers to the description in the will, then all manner of parol evidence is admissible (*Powell Ec.* 563). When an instrument appears on its face to be free from ambiguity, but upon the endeavour

but
how

only by the person whose document is under construction; and not so

matter of the transaction, has been fixed, by parol testimony of the sense in which they were usually received. 34 C. L. J. 160. See also 68 Ind. Cas 138.

Who may give evidence
of agreement varying
terms of document

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any fact tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

enabling provision, cannot be as to a fact in issue or a relevant fact. 27 M. 329. The rule of exception 92 of the Act, is limited in its operation to parties to the instruments, which is sought to be contradicted or varied, and to the representatives in interest. This section enables

The word "varying" in this section covers the same ground as the words "contradicting, varying, adding to or subtracting from" in s 92 53 Ind. Cas. 242.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1895) as to the construction of wills.

Scope.—Act X of 1865 and Act XXI of 1870 have been repealed and re-enacted by Act 39 of 1925. So the provisions of this chapter is applicable to all instruments other than wills and to all wills which are not made in accordance with the provisions contained in that Act

PART III.

Production and Effect of Evidence.

CHAPTER VII.

OF THE BURDEN OF PROOF.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Burden of proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person

Illustrations.

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

Different meaning of the term.—The expression "burden of proof" has been used in a double sense: (a) As meaning the duty of the person alleging the case to prove it, (b) As meaning the duty of the one party or the other to introduce evidence.

The first is proper meaning of the term.—"The theory of

is on the defendant. It is not upon the plaintiff, because it is not necessary for him to prove his case, on account of the admission of all the facts.

An admission upon the trial does not affect the burden of proof. To relieve the plaintiff it must be a formal admission in the defendants' pleading of the facts which constitute the plaintiff's case. The defendant, if he sets up in his answer other facts which he claims to be a defence, is then the one who has alleged the facts which are in issue, and he must prove them." *McKelvey's Law of Evidence* p. 68.

Burden of proof.—Before a Court can proceed to hear a case, it is absolutely necessary to determine which party shall begin, or upon whom

The general rule is that the first party must prove it. This would be the fact in issue, but there may be several facts in issue, the burden of proof of some being on one party and of others on the other party. The position is practically this, that the burden of proof lies at first on the party against whom judgment would be given if no evidence at all were adduced. When such party has given sufficient evidence to entitle him to judgment if no further evidence were given, the burden of proof shifts to the other party, and may be repeatedly so shifted. In a criminal case there is generally no difficulty, as all the allegations are invariably made by the prosecution, on whom the general burden of proof invariably lies. So the burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact. This rule as to the burden of proof applies generally to negative averments. (*Cockle Cas.* 123—124). See also 35 C. 1051; 9 W. R. 192; 39 C. 245; 47 M. 337 (P. C.)—46 M. L. J. 546, 75 Ind. Cas 733, 3 U. P. L. R. 44.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Scope.—The general burden of proof is upon the party who would be unsuccessful in the case if no evidence at all were given, and such party

is the right to begin. The burden of proof of any particular fact in issue is upon the party who alleges the affirmative thereof (*Amos v. Hughes*, 11 M and Rob 464; *Cockle Cas* 125). In determining burden of proof the Court should consider what is the substantive fact to be made out, and on whom it lies to make out. It is not so much the form of the issue which ought

Leggatt, 7
onus of proof
which party

When evidence is given the parties from moment to moment may reach points at which the onus of proof shifts. As soon as he brings evidence which, until it is answered, rebuts the evidence against which he is contending, then the balance descends on the other side, and the burden rolls over until again there is evidence which once more turns the scale. *Per Bowen L J* in *Abrath v North-Eastern Railway Co*, 11 R 11 Q B D 440. In the same case *Brett, M, R*, says: But, then, it is contended (I think fallaciously) that if the plaintiff is given *prima facie* evidence which, unless it be answered, will entitle him to have the case decided in his favour, the burden of proof is shifted to the defend.

It is not assent to it. It is stated thus. The plaintiff

may be going to introduce evidence which the case. If he fails to introduce any evidence at all, or if he fails to introduce sufficient evidence to justify a submission of a case to the Court, the case, without any evidence being introduced by the defendant

When the case is brought as a *prima facie* case, then in the

evidence to controvert such a case, the Court would be bound to find in his favour.

Right here we run up against the other sort of burden of proof noticed above, which is not really burden of proof at all, but only the use of that term to express something very different. When the plaintiff has introduced enough evidence to make out a *prima facie* case, the defendant unless he would see the verdict for the plaintiff, must take up

the effect of that going forward may be called the question of

burden or onus of proof is only a rule for deciding on whom the obligation of going further, if he wishes to win, rests." *Per Bowen, L. J. the Abrath v. North Western Railway, ubi supra*

Cases.—27 A. 71—1 A. L. J. 423, 11 B. 433. U. B. R. (1897-1901) Vol. II, 412; U B R. (1897-1901) Vol. II, 409.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft, to C. A must prove the admission

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Scope.—The term "burden of proof" is used in two senses: as regards (1) the whole case, (2) particular facts. Section 10 deals with burden of proof of the first class and this section deals with burden of proof of the second class. The burden of proof of any particular fact in issue is upon the party who alleges the affirmative of such fact. It is only necessary to add, and to emphasise, that the substance, and not the mere *form* of the pleading is to be considered. The position can not be altered, nor can the Court be misled by the ingenious manipulation of language. This rule as to the burden of proof applies generally to negative averments unless by reason of their complexity or difficulty of proof or by virtue of some statutory provision the burden is upon the person denying the allegation, as will be seen below (*Cockle Cas 123*). The difference between this section and section 101, consists in this. By section 101 the party has to prove the whole of the facts which he alleges, to entitle him to judgment when the burden of the proof is on him. The present section provides for the proof of some one particular fact. The illustration sufficiently points to the meaning. The whole of

the facts, however, numerous and complicated, which go to make up the prisoner's guilt must be proved by the prosecution. If the prisoner wishes to prove a particular fact, his *alibi*, for instance, he must prove it. If the prosecutor wishes to prove the case, not by independent oral testimony but by the isolated fact of the prisoner's admission, or if he wishes to throw that in as an additional fact, he must prove it (*Norton Ev.* 219-220).

104 The burden of proving any fact necessary to be proved to order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Scoop.—The meaning of this section is that no person shall be allowed to give evidence before he has shown that he is in a legal position to do so. *Vide s. 136, Clause 2, (Norton Ev. 290).*

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Burden of proving that case of accused comes within exceptions

Illustrations.

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code provides that whoever voluntarily causes hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 325 lies on A.

Scope.—In criminal cases, the general rule is that the prosecution must prove the facts alleged by it. This section is an exception to the general rule. Under the provision of this section, an answer setting up the right of private defence, must be supported by evidence, giving a full and true account of the transaction from which the charge against, an accused person arises. No accused person can, at the same time, deny committing an act and justify it 1 C. L. R. 62; A. W. N. 1898, 209; A. W. N. 1898, 210. The burden of proving the existence of circumstances bringing a case within any special exception or proviso contained in any part of the Penal Code is upon the person accused, and the Court shall presume the absence of such circumstances. 8 Ind. Cas 259—11 Cr. L. J. 612. See also 7 A. L. J. 438, 11 C. L. R. 232 P. C.; A. W. N. 199, 113.

Special exception.—The onus to show that a game is a game of mere skill is on the accused 15 Cr. L. J. 276—23 Ind. Cas. 484; see 8 C. W. N. 714; U. B. R. (1893-1900); 207, 6 A. 200, 50 C. 318; 45 A. 329.

This section says nothing about pleas but places the burden of proof in certain circumstances on the accused. But if the prosecution has already performed the task for him by letting in evidence circumstances from which such a plea necessarily follows, it is the duty of the Court to give him the benefit of it. 81 Ind. Cas. 901.

Burden of proving fact especially within knowledge. **106.** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Comment: This is an excellent example of the newspaper doing what it should do. Whom the subject

who asserts the negative." Vide right by the legal at an accident.

while travelling in the train of the defendant company, the onus of proving that there was no negligence on the part of the Railway company, lies on such company. This decision is supported not only by the ruling in the case of the *Great Western Railway Company* of

339 38 C 127 1 A 53 (1) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

Burden of proving death of person known to have been alive within thirty years.

person who affirms it.

no

or

to

the burden in proving him dead ; if however, there be a question as to fact *Wilson v Hodges*, 2 East 312 ; if however, there be a question as to the exact date at which a person died, this is for the Jury. (*R. v. Willshire*, 6 Q B D. 366) and proof that he was alive at an antecedent date may or may not afford a reasonable inference that he was living at the subsequent date (*Ponell Ev. 411*).

108 [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it.

Legislative changea.—The words within brackets were substituted by Act 18 of 1872

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the probabilities of the case. It is quite clear, therefore, that when no such probability exists, the presumption cannot arise."

But this presumption will not arise if the person in question left his home under the impression that he would return.

When that is the exact time of death, the party interested in fixing the time; for there is no presumption as to when, during the seven years, the person in question died. (*Powell, Ev. 412*).

ss 107 and 108 lay down no rule as to the presumption of the exact time of the death of a missing person, so that whenever the question as regards the exact time of death arises, it must be dealt with according to the evidence and circumstances of each case, when the death is alleged to have occurred at any time not affected by the presumption of law as to these seven years. 8 A. 714=A. W. N. 1886, 239, 23 B 296, 14 M. L. J. 464. The presumption of death under this section is a presumption that the man was dead when the question was raised, that is, at the date of the suit, and not at any earlier period. The English law is otherwise. 37 C. 103=14 C. W. N. 341, 35 C. 25, 8 A. L. J. 1052 (F. B.); *contra*, 8 Ind. Cas. 55. This section supersedes the rule of Mahomedan Law that a man will be presumed dead only after 90 years from the date of his birth. 42 P. R. 1892.

Cases.—41 M. L. J. 295; 19 A. L. J. 713; 1 Pat. 475, L. R. 3 A. 393 (Rev.), 64 Ind. Cas. 468, 43 A. 673, 1923 Bom. 208, 1923 Lah. 174; 45 A. 466, 1923 M. 182, 47 B. 451.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been partners, and landlord acting as such, the burden of proving that tenant principal and agent, they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Principle.—This presumption of a continuance is clearly one of the most practical importance. It is frequently quite impossible to prove, for instance, the existence of a certain thing in a certain state or condition at the particular moment in question. It is sufficient with the aid of this presumption, to prove such existence and state at such an earlier time that, according to its nature it may fairly be presumed to have lasted to the moment in question (*Cockle Cas 29*.)

Scope—Here the presumption arises from the probability of the continuance of things once shown to exist. *Price v Price*, 16, M. & W. 232. Where, therefore, partners continue their business as before, after the partnership has expired, *Clarke v. Peace*, 33 L. J. Ch. 270; or a tenant holds over after the expiration of his lease, *Torrano v. Young*, 6, C. & P. 8 or, if in respect to the relation of principal and agent; *Rayan v. Lambs*,

12 Q. B. D. 460. If the facts existing be once established, the continuance of the partnership, the tenancy or authority on the old footing will be presumed. *Norton Ex 295*

Partners.—11 P. R. 1297

Tenants.—4 C. 114. 1 B. R. (1892-1896) Vol. II. 363; U. B. R. (1892-1901) Vol. II, 414

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving, that he is not the owner is on the person who affirms that he is not the owner.

Scope.—The fact of possession as owner is sufficient *prima facie* of or title necessary in in consequence of other side. clearly relevant to the fact of ownership, as the former undoubtedly renders the latter probable. The person who possesses and acts as owner is generally the owner. (*Cockle Cas. 851*). "The acts of enjoyment from which ownership of real property may be inferred are very various, as for instance perambulation the foreshore, h possession is

Jones v Williams 2 M. and W. 326 Possession is *prima facie* evidence of complete ownership throwing the burden of showing that it is held on some inferior title, upon him who seeks to dislodge the possessor. 1 B. 91. The word possession in this section is to be understood as opposed to judicial possession and to denote actual present possession. U. B. R. 1905, Ev. 7, 25 B. 287. The person who wants to oust a person in possession must prove absolute private proprietary title. U. B. R. (1897-1901), Vol. II, 416. Such title must be subsisting title and not previous ownership. U. B. R. (1897-1901), Vol. II. 421. See 13 Bur. L. T. 205.

Cases.—36 C. L. J. 396; 1923 Bom. 361; 27 C. W. N. 305.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Scope.—The principle on which this section is based is a long established doctrine of equity and it has been repeatedly applied with special emphasis by the Lords of the Privy Council to transactions to which the woman of this country

is applied by the English practitioners and their congregations, trustees, wards. *Cunningham's Estate*. position of active confidence to his wife and she entered into a transaction under his guidance, the burden of proving good faith is on him. To uphold the transaction, it must be shown she was given that care and advice which was due to her in her situation. 78 Ind. Cas. 850.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Scope.—This section applies to a child born in India and to the satisfaction of those who are to decide the question, that such sexual intercourse did not take place at any time, when, by such intercourse, the child could have been begotten.

Cases.—146 P. L. R. 1910. 5 C. L. J. 1. 79 P. R. 1907. 7 Bom. L. R. 95. 20 C. 41 P. C. 25 A 403 P. C. 28 P. R. 1906. 10 Ind. Cas. 382. 68 Ind. Cas. 465. 44 A 470.

113. A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Proof of cession of territory. Note.—It is doubtful whether the Government of India without the sanction of the Parliament can make a valid cession of territory. Vide 10 B. 11. C. R. 37 on appeal to Privy Council in 1 B. 367.

114 The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Court may presume existence of certain facts

Illustrations.

The Court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

(c) that a bill of exchange, accepted or endorsed, was accepted or

own to be in
such things

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases.

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

(h) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

as to *illustration (a)*—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically but is continually receiving rupees in the course of his business;

as to *illustration (b)*—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

as to *illustration (b)*—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable.

as to *illustration (c)*—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;

as to *illustration (d)*—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course

as to *illustration (e)*—a judicial act, the regularity of which is in question, was performed under exceptional circumstances

as to *illustration (f)*—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

as to *illustration (g)*—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family.

as to *illustration (h)*—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

as to *illustration (i)*—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

Scope.—Where the fact giving rise to such a presumption as may be drawn under this section, is undisputed and no explanation negating the presumption is offered, the Court is justified in laying the onus proper where, but for the presumption, the onus could not be laid. But, where explanation negating the presumption is forthcoming, the Court is not in a position to draw the presumption until it has heard the evidence in support of the explanation and, therefore, must ignore the presumption for the purpose of determining where the onus proper lies, on the principle "when conflicting evidence on a point covered by a presumption of law is to be gone into, the presumption of law is *functus officio* as presumption of law. Such a presumption, therefore, cannot

shift "The burden of proof" in the strict sense of that term and the most it can effect is a shifting of "the burden of evidence" the burden of going forward with new evidentiary matter—and s. 4 of the Act indicates that it is for the Court which is taking evidence, to decide whether such a presumption is strong enough to produce even that limited effect. 1 N. L. R. 169. The illustrations appended to this section are not statements of the law qualified only by particular exceptions. They are merely what they call themselves, illustrations or instances of the application of certain maxims out of many possible instances. 69 Ind. Cas. 257.

Illustration (a).—The Court may presume, from the possession of stolen property, that the possessor is either the thief or has received it knowing it to be stolen property, unless the possession is accounted for. 15 P. R. 1291 Cr. Where a deaf mute was found in possession of stolen property a week after the theft, *held* in the special circumstances of the case the presumption authorised under this illustration cannot be applied. 25 Ind. Cas. 339. Where after six months after the dacoity some common ornaments were found in the possession of the accused, *held* that, having regard to the nature of the ornaments, which were of common description, and were likely to pass from hand to hand, the case was not covered by s. 114, illustration (a), and the accused should not have been called upon to explain their possession. 3 A. L. J. 808—29 A. 138, see also A. W. N. 1881, 155. But when stolen property is found in a person's possession soon after the theft the Court may presume that the party is either a thief or a receiver of stolen property. 2 Weir. 489, 1 L. B. R. 382, 13 Cr. L. J. 140. 11 A. L. J. 94. 14 L. W. 418, 32 C. L. J. 119.

Cases—20 A. L. J. 178.

Case—11 A. L. J. 94. 14 L. W. 418, 32 C. L. J. 119.

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The term "accomplice" signifies a guilty associate in crime, or when the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused he is an accomplice. 27 M. 271. There is no rule of law or practice that the self-incriminating portion of the evidence of an accomplice is unworthy of belief unless corroborated. 6 Bom. L. R. 443. The testimony of an accomplice is not required by which lays down the requirements of varying circumstances of
see also 28 C. 339; 16 C. W.

Cases.—4 Lah. L. J. 405; 68 Ind. Cas. 113; 65 Ind. Cas. 622;
67 Ind. Cas. 343; 1923 Lah. 385.

Illustration (c).—This illustration authorises the presumption that a particular judicial or official act has been performed regularly, but it does not authorise the presumption without any evidence that the act has been performed. 6 C. W. N. 845.

Illustration (d).—This illustration does not compel, but certainly permits, the Court to make a presumption as to the continuance of the state of things. 29 Ind. Cas. 694=20 C. W. N. 48. Proof of the existence at a particular time of a fact of a continuous nature gives rise to rebuttable presumption within logical limits that it existed at a subsequent time or has previously existed. The limits of time within which the inference of continuance possesses sufficient probative force to be relevant must obviously vary with each case—always strongest in the beginning, the inference steadily diminishes in force with the lapse of time at a rate proportionate to the quality until it ceases or perha
To put the matter shortly
whose existence at a particular time is once established in evidence continues to exist as long as such facts usually exist. 36 C. L. J. 336.

Illustration (e).—There is a well known maxim of law *omnia presumuntur rite esse acta*: this is an inference of reasonable probability arising out of the experience of mankind. The law assumes that any act done in public or any formal act privately done will be performed in due form by the person authorised to do it. (*Powell v. 391*). Under this section, it is presumed that official acts have been regularly performed "Regularly performed" means performed with due regard to form and procedure. 1921 Pat. 343-63 Ind. Cas. 226, 66 Ind. Cas. 471; 68 Ind. Cas. 740; 4 Lah. L. J. 448.

Illustration (f).—The posting of a letter, if proved and if the same is not returned by the Dead Letter Office raises the presumption that it must have reached the addressee. 45 M. L. J. 817.

Illustration (g).--The presumption indicated in this illustration arising from nonproduction of evidence cannot displace the contrary inference supported by adequate evidence. 63 Ind. Cas. 740 (P. C.).

Illustration: The Court may be raised, on the basis of proof, to presume that the defendant is the author of the crime.

hands of the obligor, the obligation is discharged. But in raising such a presumption the Court has to take into regard any facts or circumstances indicating that it might have been stolen. The burden shifts as the evidence is developed and when both the parties produce their evidence, the question on whom the initial onus lay ceases to be of much importance. 25 O. C. 125

Presumption of death.—Where among some relations the evidence on the question who died first is quite evenly balanced, the Court is entitled to say the probabilities are in favour of the younger man surviving the elder. 1922 Bom 347

CHAPTER VIII.

ESTOPPEL.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppels.—Most admissions can be withdrawn; the fact that they were made remains, but the party who made them can be heard to explain that he made them rashly and carelessly, or under an honest

sometimes sets in the way of one who is endeavouring to maintain the contrary of that which he once asserted in words, or unequivocally implied by his conduct." The rules of evidence forbid to allege the existence of a state of things inconsistent with his previous representation when to do so would be inequitable or contrary to the policy of the

Neither he nor any one claiming under him can give any evidence to contradict it. This is what Lord Coke meant by his quaint definition, "An estoppel is where a man is concluded by his own act or acceptance to say the truth."—*Powell Ev.* 446.

Kind of estoppel.—According to English law estoppels are of three kinds (1) By Record, (2) By Deed; and (3) By Conduct.

Estoppels by Record—The judgment of a competent Court is an instance of this kind of estoppel. Vide ss. 40-44 supra.

into a solemn engagement, neither he nor his assigns are permitted to deny the facts.

Estoppels by conduct.—Estoppels by conduct, or, as they are still sometimes called, estoppels by matter *in pais*, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as

tion, the former is concluded from averring against the latter a different state of things as existing at the same time"—*Phipson Ev.* 608. This kind of estoppel has been dealt with in ss. 115 to 117. The object of the rule is this. The Court is to dispense justice and the rules of procedure should not be allowed to defeat the ends of justice. 46 A 214

wise to disclose the truth, may often have the same effect." No actual

verbal representation is necessary to give rise to estoppel. It is quite enough that the conduct of the party leads another to act in the belief that he asserts no claim to the property. 19 I. A. 203, 80 Ind. Cas. 994; see also 14 A. 394 (P. C.) 77 Ind. Cas. 214. This section is not exhaustive. 33 C. 915, *contra* 35 C. 904. There is no peculiarity in the law of estoppel in India as distinguished from that of England. The law is clearly and substantially set forth in this section. 46 A. 728-51 I. A. 326 P. C. Where all the facts are within the knowledge of both parties there is no scope for the doctrine of estoppel. The phrase "act on such belief" must have altered his position with reference to the subject matter of the representation. 25 Bom. L. R. 1170. This section may no doubt override ss. 91 to 94 because the law of estoppel is one which must prevail against a rule of procedure only. 72 Ind. Cas. 931. A person who knows the truth can hardly be allowed to rely upon an estoppel arising from a false representation. (1923) M. W. N. 225, 30 C. 539-5 Bom. L. R. 421 (P. C.). Where A and B convey property to C making him believe that they are sole owners of the property and C acting on that representation takes the property for consideration. A and B are estopped from asserting the title of a third person to the property of D who was aware of the title of that third person. 36 C. L. J. 78. Where a statement is relied upon as a ground for estoppel, it is immaterial that the statement caused a change of position. 62 Ind. Cas. 809. Estoppel is a rule of law. 61 Ind. C. L. J. 111. A statement of fact is not a ground for estoppel unless it has caused a change of position. 7 A.

tion act of omission. If some act is done, estoppel, unless it has caused a change of position, is not a ground for estoppel. 7 A.

67 B. (1) D. J. 300 4180 / C. L. R. 401.

Estoppel—Point of law—There is no estoppel by reason of misrepresentation on a point of law and a transaction which is invalid can be declared to be such at the instance of either party alone. 82 Ind. Cas. 126. Representation on a matter of law, e. g. as to the validity of an adoption creates no estoppel. 70 Ind. Cas. 653. An admission on a point of law is not an admission of a "thing" so as to make the admission a matter of estoppel within the meaning of this section. 21 A. 285.

When the law of contract declared that an infant would be liable upon a contract or in the Statute of Fraud in

with a contract, he cannot be made liable on the same contract by means of an estoppel; in other words there can be no doubt about the general law that the principle of estoppel which is a provision of adjective law cannot be invoked to defeat the plain provision of a Statute. 71 Ind. Cas. 161; 20 C. W. N. 418; see also 9 A. L. J. 103; 8 A. L. J. 1058; *contra* 31 A. 21; 29 C. 126, 15 C. W. N. 239; 21 B. 198, 19 Bom. L. R. 561; 23 Bom. L. R. 975. In the latter case it was also held that "person" includes minor or lunatic. See also 25 C. 316, 1 Lah. 389, 60 Ind. Cas. 267. Section 115 does not apply to minors. The term "person" in that section applies to one who is of full age and competent to enter into a contract. 26 C. 381—3 C. W. N. 468.

Declaration, act or omission.—The estoppel under this section may arise by reason either of a declaration, an act or an omission, but in either case there must be an intention on the part of the person against whom the estoppel operates to cause or permit a belief in the mind of another. In the case of a mere omission no such intention can well be imputed unless the true facts are known to the person whose omission is in question, but there must be a deliberate declaration or act upon it, to have its effect upon the mind of the other party. 67 Ind. Cas. 744. Estoppel is purely a personal bar operating against the person whose conduct constitutes it, and against his privies and representatives. 14 C. 401; 17 M. 473.

Adoption.—Where an adoption made by a Hindu widow is invalid for want of permission from her deceased husband she is not estopped from repudiating or denying it by the circumstance of her having for sometime treated it as effective. An adoption *ab initio* invalid may be ratified by the husband of a widow, and the widow is not estopped from denying it.

estoppel cannot take the place of a religious act on which rests the conventional Hindu belief that a valid adoption generates filial relation and religious competency to make funeral and annual offerings with efficacy. 18 M. 53. See also 19 B. 374. Where a widow, has intentionally induced a boy's father to believe that she had authority from her husband to adopt and that, in pursuance of that authority, she received the boy in adoption, she would be estopped from denying such authority. 169 P. R. 1832; see also 15 M. 486—2 M. L. J. 114.

116; No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant
 Estoppel of tenant; and of licensee of person in possession

that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1)—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2)—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

Scope.—This is another instance of estoppel by conduct. A bailee is estopped from denying that the bailor had, at the time the bailment was made, authority to make it. (*Gosling v. Birmic* 7 Bing. 339). But when the bailee is evicted by title paramount, he can set up that title against the bailor with the consent of the person whose title is set up (*Biddle v. Bond*, 6 B. and S. 225; *Rogers v. Lambert*, 24 Q. B. D. 573) cited in *Powell*. 474. The acceptance of a bill is also deemed a conclusive admission as against the acceptor, of the existence of the drawer and the genuineness of his signature, and of his capacity to draw (*Sanderson v. Collman*, 1842, 11 L. J. C. P. 270); and if the bill be payable to the order of the drawer, of his capacity to endorse. (*Taylor v. Croker*, 1803. 4 Esp. 127); and if it be drawn by procuration

Forged endorsement.—No body is entitled to any thing through a forged negotiable instrument, in as much as the forged endorsement is a nullity in itself. 36 C. 229.

CHAPTER IX.

OF WITNESSES.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless

he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Comment—Evidence must be given by legally competent witnesses. The normal man is competent, and presumed to be so. The law of competency is therefore practically the law of incompetency, consisting of rules of exclusion.

Formerly there were several grounds of exclusion of witnesses, the chief being (1) incompetency from interest, and (2) incompetency from mental incapacity. On the former ground, not only were parties themselves and their husbands and wives excluded, but also all persons who were in *pari jure* with either party, or otherwise substantially interested in the proceedings. Successive Statutes have abolished this kind of incompetency, leaving the fact of interest in the proceedings to affect credibility only.—*Cockle Cas.* 243

Scope.—Under this section all persons are competent to testify unless the Court considers that they are incapable of giving evidence or understanding the questions put to them by reason of tender years, extreme old age, disease whether of body or mind or any other cause of the same kind. Even a lunatic, if he is capable of understanding the

affirmed. In determining the question of competency the Court under this section, has not to enter into inquiries as to witness's religious belief, or as to the knowledge of the consequences of falsehood in this world or the next. It has to ascertain, in the best ways it can, whether, from the extent of his intellectual capacity and understanding, he is able to give a rational account of what he has seen or heard or done on a particular occasion. If a person of tender years or

requirements, his competency as
mpress v. Lal Sahai, 11 A. 183
 person is a competent witness in
 a child who does not understand
 the nature of an oath. *Powel Ev.* 197. But in India, where a person is competent to testify according to the provisions of this section, but is unable owing to his tender age, to comprehend the nature of an oath or affirmation, s. 13 of the Oaths Act relieves the Court of the necessity of administering an oath or affirmation to him; and the evidence of such a person recorded without oath or affirmation may be admitted. 10 O. C. 337=7 Cr. L. J. 89. See also 16 B. 359, 14 B. L. R. 204 (F. B.); 11 C. P. L. R. Cr. 16; *contra* 16 M. 105; 10 A 207; 11 A. 183.

How to ascertain competency.—By this section, the Legislature has not prescribed an inflexible rule of universal application to the effect that, before a child of tender years is questioned, the Court must

by preliminary examination test his capacity to understand and to give rational answers and must form an opinion as to the competency of the witness before the actual examination commences. 18 C. W. N. 147=41 C. 406, *contra*, 11 C. W. N. 51; 2 O. Bom. L. R. 365.

Tender years.—There is no fixed period of legal discretion under which an infant is an incompetent witness. The rule by which an infant under seven years of age cannot commit a crime, because the law presumes him conclusively not to have sufficient intelligence for the act, has no analogy in the law of evidence (*Per Patteson, J.*, in *R. v. Williams*, 7 C. & P. 320). Age is immaterial; and the question is entirely one of intelligence, which, whenever a doubt arises, the Court will ascertain to its own satisfaction by examining the infant as regards his understanding. (*Powell Ev* 215). A Judge can act on the evidence of a child of tender years if he is impressed by its intelligence and demeanour and the evidence given bears no marks of tutorage 6 Lah. L. J. 474. A Court should ascertain first of all by some simple questions whether a child is competent to understand and answer questions. 1923 P. 91.

Idiot.—An idiot is one that hath no understanding from his nativity, and therefore is by law presumed never likely to attain any, and such a person is incapable of giving evidence. The presumption is always in favour of sanity, hence the onus of proving the unsoundness of mind of any person tendered as a witness rests on those who dispute his sanity. *Harrod v. Harrod* 1 K & J. at p. 9, *Powell Ev* 213.

Deaf and Dumb.—Deaf and dumb persons were formerly regarded as idiots, and therefore incompetent to testify, but the modern doctrine is that if they are of sufficient understanding, they may give evidence either by signs or through an interpreter or in writing. (*Powell Ev* 214)

Explanation.—A Lunatic is one that had understanding but by disease, grief, or other accident has lost the use of his reason. As long as the possession of the mind remains, the person is incompetent interval. Monomania as to some the witness to him. (*R. v. Hill*, 2 Den 254). But where a person is tendered as a witness who is believed to be suffering from monomania, a preliminary inquiry as to his capacity to give evidence must be instituted and he himself must be examined. (*Powell Ev* 214).

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Dumb witnesses.

Deaf and Dumb Witness.—The same rule would, no doubt, be applicable in the case of deaf, or deaf and dumb witnesses, who might be communicated with by special signs, provided the Court was satisfied as to the reality and accuracy of such communication. Competence to understand the questions put to him and to give rational answers is under section 118 the one essential qualification for a witness. Deaf and dumb persons were formerly excluded as witnesses on the presumption of their idioy : It is now ascertained how groundless this presumption is. (*Cunningham* 349). * If the witness can write, it is a safe practice to receive his testimony in this form, than through the medium of signs. *Morrison v. Lennard*, 3 C. & P., 127. Persons deaf and dumb from birth were formerly excluded and classed with idiots. Education has now opened their ears, and metaphorically loosened their tongues. (*Norton Ev.* 306).

Deemed to be oral evidence.—Presumably to exclude the effect of putting in writing which would give the opposite side the right of a reply. (*Norton Ev.* 336).

120. In all Civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Parties to civil suit, and their wives or husbands.
Husband or wife of person under criminal trial.

English Law.—At common law, a husband or wife of a party to the proceedings, civil or criminal, is incompetent to give evidence either for or against such party. *Bentley v. Cooke*, 3 Doug. 422. The wife of a person charged with assault upon her is a competent witness against him, at common law, *R. v. Aisr*, 1 Strag. 633. Now by Statute, they are made competent witnesses as regards certain offences. But a distinction must be drawn between competency and compellability of witnesses. A wife, though rendered competent by statute to give evidence in certain criminal proceedings, is not thereby specially compelled to do so. 105 In

Scope of this section.—Under this section there is no exception either in civil or criminal cases. See also 6 W. R. Cr 27. to nullify the effect of the covered by s. 118. This section shall be competent witnesses. 49 C. 345.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to :

Judges and Magistrates

questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate ; but he may be examined as to other matters which occurred in his presence whilst he was so acting

Illustrations

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Saope.—The privilege given by this section is the privilege of the witness, *i. e.* of the Judge of whom the question is asked. If he waives that privilege, it does not lie in the mouth of any other person to assert it. 3 A 573 = A. W. N 1881, 37. But Judicial officers are not exempted from giving evidence upon matters which they saw, when sitting as Judges unless they arrive at such knowledge by virtue of an investigation which they were making as Judges. 2 Weir 777.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married ; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Principle.—This enactment rests on the obvious ground, that the admission of such testimony would have a powerful tendency to disturb the peace of families, to promote domestic broils, and to weaken if not

to such matters as has been communicated during marriage (*Taylor* § 612.41)

Scope.—This section protects the individual, and not the communication if it can be proved without putting into the box for that purpose the husband or the wife to whom the communication was made. 22 M. 1-2 Weir 778. Under this section no communication between the husband and a wife can be disclosed by the one against the other without the consent of the party concerned. The consent cannot be implied. It is incumbent upon the Court to ask the party, against whom the evidence is to be given, whether he or she would consent to the evidence being given, and not to admit it unless such consent is given. 244 P. L. R. 1913, see also 213 P. L. R. 1913, 42 C. 291, 10 P. R. 1914 Cr., 1923 Lab. 40.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the Officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Scope.—Statements made before the Income tax Collector do not relate to affairs of State and so are not governed by this section. 32 M. 62=19 M. L. J. 263 4 M. L. T. 317. Any officer having the custody of records, not being records of which the production may, on special grounds be refused, is bound to produce them on receiving a summons to that effect. 2 Weir 781. Statements made by witnesses as in the course of a departmental

malice actual, express and in fact. 6 Bom. L. R. 131 (on appeal from 27 B. 129)

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Scope.—This section follows the English law and makes the public officer the Judge as to whether a communication made to him in official confidence should or should not be disclosed. If he thinks that the public interest would suffer by such disclosure, he is entitled to refuse to disclose the communication. The mere fact that the publication of

communication might cause a scandal in the office will not justify a refusal to disclose it 7 C. W. N. 246. See also, 2 M. W. M. 369. The words "communication in official confidence" import no especial degree of secrecy and no pledge or direction for its maintenance, but include generally all matters communicated by one officer to another in the performance of duties. The words have the same meaning as "professional confidence" used in s. 126. In English law the privilege as to production of public documents before Courts of law extends even to those which pass from hand to hand, in a public office, in the usual course of business with no special mark of secrecy upon them and the ground on which the privilege is maintained is that it is detrimental to the public interests, to disclose a document which is confidential in its nature. 47 Ind. Cas. 225. But a custom officer cannot claim a privilege as to the admission, made to him by the Inspector although what took place between the two superintendents might probably be privileged 22 C. W. N. 451. No objection can be taken in appeal. 44 M. L. J. 132. A Court should decide whether the document is privileged or not. 44 A. 360—20 A. L. J. 140.

125. No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenues.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

Legislative changes.—This section was substituted by Act 3 of 1897.

Sec. 125. No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenues.

Sc. in this Case, the information is not to be unnecessarily disclosed. *Hardy's* int of its persons, who should not be unnecessarily disclosed. *Raj. L. C. C. 1897*—*R. G. 47* of 1897. *Eyre, C. J.* observed: "It is perfectly right that all information given

is made, should not be unnecessarily disclosed; if it can be made to

appear that really and truly it is necessary for the investigation of the truth of the case that the name of person should be disclosed. I should be very unwilling to stop it, but it does not appear to me that it is within the ordinary course to do it, or that there is any necessity for it in this particular case. Even when no objection is taken the Court should exclude such evidence. 46 C 898. Statements made in the course of judicial proceedings are absolutely privileged, but police report does not enjoy such absolute privilege. 22 A L J 597-46 A 471.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

- (1) any such communication made in furtherance of any [illegal] purpose ;
- (2) any fact observed by any barrister, pleader, attorney and vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment

It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation—The obligation stated in this section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me"

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose is not protected from disclosure.

communication might cause a scandal in the office will not justify a refusal to disclose it. 7 C. W. N. 246. See also. 2 M. W. M. 369. The words "communication in official confidence" import no especial degree of secrecy and no pledge or direction for its maintenance, but include generally all matters communicated by one officer to another in the performance of duties. The words have the same meaning as "professional confidence" used in s. 126. In English law the privilege as to production of public documents before Courts of law extends even

objection can be taken in appeal 44 M. L. J. 132. A Court should decide whether the document is privileged or not. 44 A. 360—20 A. L. J. 140.

125. No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenues.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue

Legislative changes.—This section was substituted by Act 3 of 1887.

Scope.—The words "information as to the commission of any offence" in this section only enact the rule which as said by *Eyre C. J.* in *Hardy's Case* (24 How. St. Tr. 808) has universally obtained, on account of its importance to the public for the detection of crimes, that those persons, who are the channels by means of which the detection is made, should not be unnecessarily disclosed. Rat. Un. Cr. C. 937—Cr. Rg. 47 of 1897. *Eyre, C. J.* observed: "It is perfectly right that all opportunities should be given to discuss the truth of the evidence given against the prisoner; but there is a rule, which has universally obtained on account of its importance to the public for the detection of crimes, that those persons who are the channels by means of which that detection is made, should not be unnecessarily disclosed, if it can be made to

appear that really and truly it is necessary for the investigation of the truth of the case that the name of person should be disclosed, I should be very unwilling to stop it but it does not appear to me that it is within the ordinary course to do it or that there is any necessity for it in this particular case. Even when no objection is taken the Court should exclude such evidence. 45 C 592. Statements made in the course of judicial proceedings are absolutely privileged, but police report does not enjoy such absolute privilege. 22 A L J 592-46 A 471

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's *express consent*, to disclose any communication made to him in the course

Professional communication.

and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment :

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any [illegal] purpose ;

(2) any fact observed by any barrister, pleader, attorney and vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment

It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation—The obligation stated in this section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me "

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—" I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure

(c) A, being charged with embezzlement retains B, an attorney, to defend him. B observes that an entry has been made in the account which has been made up by A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.*

Legislative changes.—The words within brackets have been added by Act 18 of 1872

Principle.—This rule is established for the protection of the client, not of the lawyer, and is founded on the impossibility of conducting legal business without professional assistance and on the necessity, in order to render that assistance effectual, or securing full and unreserved intercourse between the two. The privilege may be waived by the client, therefore, but not by the adviser. (*Phipson Ev.* 170).

Scope.—A legal adviser, (whether barrister, attorney, pleader or vakil) will not be allowed without the express consent of his client, to disclose oral or documentary communications made or obtained in professional confidence (*Phipson Ev.* 169). The law in India relating to professional communications between a solicitor and a client is the same as in England, and may rightly refer to this section shows the confidential character

everything that the solicitor learns in the course of his dealings with the client that is privileged from disclosure. It must be a matter communicated to him confidentially for the purpose of obtaining his professional advice. The solicitor claims the privilege as that of his client. He must, then, state the name of the person for whom he claims the privilege. Where one client mentions the name of another client in a communication made to the solicitor in the course and for the purpose of professional employment by him, and the latter consults the solicitor afterwards on business relating to his own affairs, then, unless the name of the latter is communicated to the solicitor confidentially for the purpose of being advised by him, on the express understanding that it should not be communicated to the rest of the world, the solicitor is bound to disclose the name of the client. A solicitor is not at liberty to disclose the matter of employment, without his client's consent. This section protects from publicity not merely the details of the business, but also its general purport, unless it be shown *abundantly* that such business as the communication made in respect of it, falls between a solicitor and his client, and that the communication is made in the course of professional employment.

the solicitor is not privileged from disclosing the name of the person making the statement, unless the name was made the subject of a special confidence and it was stipulated by or on behalf of his client that it was not to be disclosed. 18 B 263 See also L. B. R. (1893-1900) 358 26 Bom L. R. 187 This section must be construed as applying to all persons who came in within the category of "pleader" as defined in s. 4 (a) of Cr. P. Code and includes therefore a mukhtar. 25 C 735=2 C. W. N. 454 The consent required by this section should be given on each occasion when a communication of the kind described is sought to be made admissible in evidence. A. W. N. 1890, 172 The communication must be of a confidential or private nature. 3 B 91 The communication must be made to him in the course and for the purpose of his employment as a pleader. 4 Bom L. R. 460, 5 Bom L. R. 122. A Court has no power to order the production of a document which is privileged. 7 Bom L. R. 700 See also 16 C. W. N. 742 Neither a formal retainer, nor payment of fees is necessary to constitute the relationship of solicitor or client it is enough if the solicitor is consulted in any way in his professional character. The sale, purchase, and conveyance of estates or negotiations for a loan are within the scope. According to English Law communications in furtherance of a fraud or crime are not protected. But according to this section communication made in furtherance of any illegal purpose are not protected (*Vide Phipson, Ev 172*). Trade secrets communicated to a vakil in course of his professional advice is also protected. 16 A. L. J. 987

Section 126 to apply to
interpreters etc.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys

and vakils.

Scope.—Where a communication is made to a pleader's clerk he is not at liberty to disclose the communication. 26 C. 53=2 C. W. N. 649; U. B. R. (1897-1901) Vol II, 368 The communications must have been confidentially made for the the purpose of employment or the knowledge confidentially obtained solely in consequence of it, to be privileged (*Gardner v Irvin*, 4 Ex. D. 49, *O' Shea v Wood*, 1861, P. 286)—*Phipson Ev 172*

128. If any party to a suit gives evidence therein at his own instance or otherwise he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, [pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by
volunteering evidence

Legislative changes.—The word within brackets has been inserted by Act 18 of 1872

Scope. The old law made it never be waived by the client either client examining the solicitor as to ly examined as to part, he cannot by sending the opponent a copy such privilege cannot be waived by ly the old law, a party, who gave evidence in a suit at his own instance was deemed to have waived his privilege, and to have consented to disclosure by his professional adviser of any relevant matter, which the professional adviser would, but for such privilege, be bound to disclose. Under the present Act the mere fact of the party's giving such evidence himself does not imply such consent, and if he calls the barrister, etc., as a witness and questions him, he is deemed to consent to disclosure by the barrister, etc. only if he questions him on matters which, but for such question he would be bound not to disclose, and by giving evidence he does not expose himself to be questioned about professional communications except so far as is necessary to explain his evidence (*Cunningham v. 361*).

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given but no others.

Reason for the rule.—Under the old law, (Act II of 1855) section 22, a party to a suit, who offered himself as witness, was bound to produce any confidential writing or correspondence that had passed between himself and his legal adviser. The reason for this rule is not very clear; and the present section abrogates it so far that such correspondence need be produced only if it is necessary to explain the witness's evidence. It will be observed that the doubts which were at

Horgan, L. R. 8 Ch. App. 361—(Cunningham, v. 361).

Scope.—Statements of witness recorded for the special purpose of being shown to a legal adviser with a view to ascertaining whether it is a good case for the Court to decide are privileged. 43 Ind. Cas. 71.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims

Production of title deeds of witness not a party

English law.—A witness, if a stranger, cannot be compelled to produce his title deeds or documents in the nature of title deeds, on account, it is said, of the mischief which, in the present complicated state of the law of real property, might result if title to states were subject to compulsory disclosure. *Mr Best* suggests the reason to be the mischief which might ensue from an erroneous decision of the Judge as to the nature of the documents (*Phipson Ex. 179*). A person who is not a party to the action cannot be compelled to produce his title deeds, or other documents referring to his title to any property. If one person wants to see another person's title deeds or documents he should himself bring an action against such person for discovery. *Cockle Cas 303; Pickering v. Noyes, 1 L J K B (O S) 11* to produce his security including payment of his principal. *Donagall, 1 R 5 Ch 502*. A statement which he swears will tend to criminate him, *Roe v. New York Press, 75 L. T. Jo 31*

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production

Production of documents which another person having possession could refuse to produce

Notes.—By section 65, secondary evidence can be given when a document is in the custody of a person who is legally bound to produce it and who refuses to do so. In the case, therefore, of a document protected under this or the preceding section, secondary evidence of its contents could not be given. (*Cun. Ev. 366*).

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind :

Witness not excused from answering on ground that answer will criminate.

10 C. W. N. 669 The rule as to corroboration, being necessary to evidence of an accomplice being one of practice, a Court of revision will not, where the rule is applied, require corroboration of the accomplice's testimony. 7 11 Bom L. 111 he law both of the accomplice and the accomplice's testimony is admissible, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. 14 B. 115.

The corroboration required of the testimony of an accomplice should go to some circumstances affecting the identity of the accused as participating in the transaction. Such corroboration ought to be that which is derived from unimpeachable or independent evidence as distinguished from that derived from the earlier statements of the same accomplice or the statements of other accomplices. 6 Bom. L. R. 481. The amount of criminality is a matter for consideration, and when a person is only an accomplice by implication or in a secondary sense, this evidence does not require the same amount of corroboration as that of a person who is an actual perpetrator with the principal offender. In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the Court must exercise careful discrimination and consider all the surrounding circumstances in order to arrive at a conclusion whether the facts deposed to by the person alleged to be an accomplice are borne out by those circumstances, or whether the circum-

necessary to show not only that there is no corroboration, but that the Judge, taking all the evidence together was wrong in acting on it. 16 C. W. N. 669. It is the invariable practice of Courts to require corroboration by an independent witness of so much of the evidence of an accomplice as goes to identify the accused person as the offender. 4 Bom L R. 401. See also 8 C. W. N. 171; 11 B. & F. 300; 1 B. & F. 300; 1 B. & F. 300.

1	1
as	as
an	an
27	27
ri	ri
R.	R.
A	A
3;	3;

Contra, 1 M. 394 : 35 M. 247 ; 35 M. 397 ; 1 M. L. J. 397 (F. B.).

There must be independent corroboration with respect to the identi-

fection of the persons whom acc
facts they state 21 P. R. 1866 C
also 1 M. L. J. 397 Rat U'n C
A C 196 See also 7 Bom. L. R.
there is nothing in the case outside the confession of a co-accused, the
accused must be acquitted 43 A 409—A 1 R. 1926 All 377

Cr de 4 P. R. 1903
9 C 1923 Lah 153 ;
4 P Ind Cas 462 ;

Principle.—Accomplice evidence is held untrustworthy for these reasons, (1) because an accomplice is likely to swear falsely in order to shift the guilt from himself, (2) because an accomplice, as a participator in crime, and consequently as an immoral person, is likely to disregard the sanction of an oath, and (3) because he gives his evidence, under promise of a pardon, or in the expectation of an implied pardon, if he discloses all he knows against those with whom he acted criminally; and this hope will lead him to favour the prosecution. There is often danger that, for the purpose of saving themselves rather than stating the truth, the accomplices will make out a stronger case against the prisoner and more favourable to themselves than the real truth will warrant. 14 B 115.

Accomplice.—The term accomplice signifies a guilty associate in a crime, or, when the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice. 27 M 271. Where an accomplice is an involuntary one his statement is not tainted. 2 Weir 809 N. A son is not an accomplice.

accomplices, unless they co-operate in the payment of the bribes 33 C. 649; 27 C. 144 No man ought to be treated as an accomplice on mere suspicion 11 Bom. L. R. 1153 Involuntary payment of bribe does not make one an accomplice 27 C 925. See also, 31 C. L. J. 30.

134 No particular number of witnesses shall in any case be required for the proof of any fact.
Number of witnesses.

Scope.—The general rule is that the Court can act upon the uncorroborated evidence of a single witness if satisfied with such evidence. (*Cockle Cas* 141). But there are certain cases in which the legislature has required as a matter of law that credence should not be given to it.

un-supported testimony of one witness (*Powell Ev. 515*). But the *quantum* of evidence permitted upon a given point as distinguished from the *quantum* of evidence required, rests in the discretion of the Court which will not permit a trial mischievously to be protracted by evidence or examinations merely cumulative in their nature (*Best. 570*). It is not open to the trying Magistrate to put any arbitrary limit on the witnesses whose evidence the defence desires to adduce 22 C. W. N. 408

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Sops.—This section deals with the law which regulates the order in which witnesses are to be examined. Before the Court can proceed to hear a case, it is obviously necessary to determine which party shall begin, or upon whom the burden of proof on the whole case lies. The general rule is that the party who alleges any matter in issue must prove it. This would be simple enough if there were only one fact in issue, but there may be several facts in issue the burden of proof of some being on one party and of others on the other party. The position is practically this, that the burden of proof lies at first on the party against whom judgment would be given if no evidence at all were adduced. (*Cottle Cas. 127*). The party who would lose the case if no evidence is given has the right to begin. In criminal cases there is practically no difficulty as all the allegations are invariably made by the prosecution and as such the prosecution has got the right to begin.

Civil cases.—In civil cases the plaintiff has the right to begin unless the defendant admit the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin (*Civil Pro. Code Order 18, rule 1*). On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. The other party shall then state his case and produce his evidence (if any) and may then address

the Court generally on the whole case (Order XVIII, rule 2). Where there are several defendants some of whom support the case of the plaintiff wholly or in part and the others oppose him, the rule is that those who support the case of the plaintiff must address the Court and adduce his evidence in the first place and then the other defendants must address the Court and adduce evidence 32 B. 599.

Criminal cases—In criminal cases the prosecution has the right to begin. The witnesses for prosecution are examined in the first place. There are different kinds of procedure in different kinds of cases. Chapter XX of the Criminal Procedure Code prescribes the procedure to be adopted in summons cases. Chapter XXI lays down the procedure to be adopted in warrant cases and Chapter XXII prescribes the procedure to be followed in summary trial. In all of them the prosecution witnesses are to be examined in the first place.

136. When either party proposes to give evidence of any fact,

Judge to decide as to the Judge may ask the party proposing to
admissibility of evidence. give the evidence in what manner the
 alleged fact, if proved, would be relevant;
 and the Judge shall admit the evidence if he thinks that the fact,
 if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved or permit the denial of possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which may be proved to have been the cause or effect of a fact (B, C and D) which may be regarded as the cause either permit A to be proved before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

Para (1)—Section 5 lays down "Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as may be necessary to explain the facts in issue." No party is entitled to require the Court to prove any fact—otherwise the Court would be empowered to prove any fact. It has been hinted that the law of evidence has evolved out of Jury system.

evidence is extremely detrimental to the interest of the parties. So the Judge is authorised to decide the question of relevancy of a fact by asking questions to the party tendering evidence.

Para 2.—This para should be read with s. 104. It often happens that a fact is proved by the evidence of a witness who is not a party to the suit.

ncy. It is to meet the requirements of the Evidence Act, 1872.

Para 3.—Illustrations (c) and (d) explain the meaning of this para. Where the relevancy of one fact depends upon another fact, which is not proved before the Court, the Court may either permit the first-mentioned

fact to be proved before the second fact or may require the party to adduce evidence in the first place for proving the second fact.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called

his examination-in chief

Cross-examination

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Note.—As soon as the witness has taken the oath or affirmed, he will be examined by the counsel for the party who called him as a witness, this is examination-in-chief. Next, he will probably be cross-examined by the other party. Lastly, he may be re-examined by the party who called him. (*Powell Ev. 525*).

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

Order of examinations.

The examination and cross-examination must relate to relevant facts, but the cross examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross examine upon that matter.

Direction of re-examination.

Principle.—Long forensic experience has evolved a body of rules of practice which undoubtedly tend to elicit the truth, and thus materially assist the tribunal in ascertaining the weight which should be attached to the evidence of any witness. (*Powell Ev. 525*).

Examination. The first in which regulates examination-in-chief be put which duty of counsel to bring out clearly and in proper chronological order every relevant fact in support of his client's case to which the witness can depose. This is more difficult than may at first sight appear. The timid witness be encouraged; the talkative witness repressed; the witness strong a partisan must be kept in check and yet the

suggest to the witness what he is to say. An honest witness, however, should be left to tell his tale in his own way with as little interruption from counsel as possible. In criminal cases, the duty of counsel for prosecution may be

" We may here observe that it is to an affirmative proof that an examination-in-chief is mainly addressed, and the proof is that of the issue to be tried. The leading in the cause, since of all diverting, used in the sense of another. In this view

a negation by a defendant of the case of the plaintiff would have to be regarded as an affirmation of the former. A the plaintiff, avers that he sold goods, to B the defendant while B says that he did not. 'The examination on the part of B of his witnesses, and in support of his defence, would be as much an examination-in-chief as that by A of his witness.'—*Goodeve Ev* 194. A witness when under examination must speak of facts within his knowledge. Except in certain exceptional cases, his opinion or belief could not be admissible. Nor does this rule exclude only that which would ordinarily fall under the head of belief; such matters, for instance, as one believed because a narrator of credibility had averred their existence. It would extend even to inferences, in the nature of opinion, which

the facts before him. Testifying as only do so according to the extent He is not required to speak with subtlety from his mind "If" says Professor ed on his memory but his recollection

tion does not rise to positive assurance, it is still admissible, to be weighed by the jury, but if the impression is not derived from the recollection of the fact, and is so slight as to render it probable that it may have been derived from others, or may have been some unwarrantable deduction of witness's own mind, it will be rejected." To use the expression of Mr. Taylor in modification of the passage—"He may express it as it lies in his memory". (*Goodeve Ev*. 195). But there are exceptions to the rule, though they will be found limited to the instances where the nature of the case does not admit of more positive evidence. Thus, in a question of identity between persons and handwriting, a witness is allowed to speak upon belief. So, in one requiring for aid in its determination, the experience to be derived from science, art, or trade, witnesses skilled, in such matters, or as they are termed experts are admitted to give, as evidence, the results of their own craft bearing on the issue, as in questions of foreign law or usage skilled or competent persons are admitted to pronounce authoritatively, and as matter of evidence, what that law or usage is. So in actions for criminal

It is certainly implied by this section that a party must have had an opportunity to cross-examine and does not mean that merely a right to cross-examine a witness without an opportunity being offered for cross-examination is sufficient compliance with the requirements of the law 73 Ind. Cas 339=24 Cr. L. J. 595

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross examined unless and until he is called as a witness.

Cross examination of person called to produce a document

Scope.—It is the rule that, if a competent witness is intentionally ^{made,} the right of cross-actually given *Rex v. 355, 6 B. L. R. App. 88*

But there are certain exceptions to the general rule. The rule does, however, extend to a witness who is simply subpoenaed to produce a document to be identified or proved by another witness. In such a case he need not be sworn. (*Summers v Moreley*, 2 Crompt. and M. 477, *Perry v Gibson*, 1 A and E 48; *Rush v Smith*, 1 C M. and R 94; *Davis v Dale*, 4 Car and P 335, *Griffith v Ricketts*, 7 Hare, 300, *Reed v. James*, 1 Stark. 1327).

Until he is called as a witness.—i.e. until he is sworn intentionally. If he is unnecessarily sworn he cannot be cross-examined. (*Rush v Smith*, 1 C M. and R 94); nor where he is sworn by mistake (*Wood v Mackinson*, 2 M and R. 273, *Clifford v. Hunter*, 3 C and P 16, *Red v. James*, 1 Stark 1327).

Witnesses to character.

140. Witnesses to character may be cross examined and re-examined.

Scope.—According to English practice it is not usual to cross-examine, except under special circumstances, witnesses called merely to speak to the character of a prisoner: *Examination of such witnesses also the same as the use of usual practice, though the right*

141. Any question suggesting the answer which the person, putting it wishes or expects to receive is called a leading question

Leading questions.

Leading questions.—"A question" says *Bentham* "is a leading one, when it indicates to the witness the real or supposed fact which the examiner expects and desires to have confirmed by the answer. Is not your name so and so? Do you reside in such a place? Are you not in the service of such and such a person? Have you not lived so many years with him? It is clear that under this form every sort of information may be conveyed to the witness in disguise. It may be used to prepare

leading questions are often put with the permission of counsel on the other side, and such questions should then be put in the shortest and most direct manner. But when the real issue is approached the witness must be asked such questions merely as "what did you see?" "What did you hear?" "What happened next?" This rule prevents, at least in some measure, the possibility of any collusion between a prosecutor, or a party,

question from its nature cannot
Judge may allow it to be put. (J. v. ...)

If objected to etc.—If the objection is not taken at the time, will be too late to
ing been elicited
If will interfere to
permit a leading question or a series of leading questions being put; but it is the duty of the opposing counsel to take objection, and it is only through want of practical skill that the omission occurs. At the same time, it is to be observed that if evidence is elicited by a series of leading questions unobjected to, the effect of the evidence so obtained is very much weakened, for it can scarcely escape the notice of the Judge. It is advisable, therefore, for a counsel, examining-in-chief or on re-examination, not to put leading questions, except of course as to those points on which they are expressly permitted by the Act. (*Norton Ev* 325).

143. Leading questions may be asked
When they may be asked, in cross-examination,

Comment.—If any presumption is to be entertained as to the bias of witnesses, it is that the witness is unfavourable rather than favourable to the cross-examiner, hence, the reasons for the rule excluding leading questions do not apply to cross-examinations. But although it is the undoubted rule that leading questions may be asked in cross-examination, the rule is subject to the qualification that the Court, in its discretion, may restrict the right, where the cross-examiner. If the privilege we the Court, serious injustice might be concealed his bias in order to be call an intimation from the cross-examiner, be most favourable to him. This privilege of submitting leading questions on cross-examination is always, therefore, subject to the sound

discretion of the Court (*Burr Jones* § 524). Thus, on Hardy's trial, a witness for the prosecution, on evincing a favourable disposition towards the prisoner, was asked a leading question by the counsel for the defence but *Ruiter, J.* refused to allow the question to be put, saying—"You may lead a witness upon a cross examination to bring him directly to the point as to the answer, but you can not go the length of putting into the witness's mouth the very words which he is to echo back again." *R v Hardy*, 24 How St Tr. p 659 cited in *Powell Ev.* 532. But in a latter case, *Alderson, B.* observed "But you may always put a leading question in cross-examination whether a witness be unwilling or not." *Parkin v Moon*, 7 C & P 405.

144 Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witness to give secondary evidence of it.

Explanation—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Scope.—This section merely points out the manner in which the provisions of sections 91 and 92 as to the exclusion of oral by documentary evidence may be enforced by the parties to the suit. "Documents which in the opinion of the Court ought to be produced" would of course, include the cases referred to in section 91, where the law requires a matter to be reduced to the form of a document. (*Cunningham, Ev.* 376).

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is

Cross-examination as to previous statements in writing.

intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

English law.—A witness may be cross-examined as to previous statements made by him in writing,—or reduced into writing, relating to the subject matter of the indictment or proceedings without such being shown to him, but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him. Provided always, that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purpose of the trial as he may think fit. Criminal Pro Act, 1865 (28 Vict C 18) s 5, see also *Darby v. Ouseley*, 1 H & N. 1.

Principle.—A witness may be questioned as to his previous written statements for two purposes: it may be to test his memory: and here the very object would be defeated if the writing were placed in his hands before the questions were asked, or it may be to contradict him: *R. v. Nobokristo*, 8 W. R Cr p. 87. And here it would be obviously unfair not to give him every opportunity of seeing how the matter really stands (*Norton Ev* 227). "This course of proceeding" says Mr. Philips (though addressing himself more especially to verbal statements) "is indispensable from principle of justice due to the witness, for as the direct tendency of the evidence is to impeach his veracity by contradicting his present statement with that supposed to have been made by him to some other person, common justice requires, that before his credit is attacked, he should have an opportunity of declaring whether he ever made such statement to that person, and of explaining, in the re-examination, the nature and particulars of the conversation, under what circumstances it was made, from what motives, and with what designs. The former account, given by him in conversation, may have been partially heard or misunderstood or partly forgotten, or intentionally misreported." *Philips and Arnold*, Vol II p 505.

§ 30. There is hardly any more familiar practice in judicial proceedings than that of impeaching witnesses by proof of their former statements, which are inconsistent with their present testimony. Since such an attempt is a direct attack upon the testimony of the witness, and may result in serious consequences, it is important that the practice should be so regular that the witness may have full opportunity to admit, deny or explain any statement which is thus assailed. It has frequently been declared that, in order to designate sufficiently the circumstances of the statement, the witness should be asked as to the time, place and persons involved in the contradiction. Although the conduct of the witness as to matters having no connection with the case

is generally irrelevant it is allowable to ask the witness on cross-examination not only concerning his contradictory statements, but concerning his actions if they have been inconsistent with his statements on the witness stand. (*Burr Jones* § 845).

Cases.—19 A. 390, 7 A. 862, 8 W. R. 87, 4 B. 576; 3t C. 142, 13 W. R. Cr. 18, 15 W. R. Cr. 23, 11 B. H. C. R. 120, 17 Bom. L. R. 590, 45 M. L. J. 438.

Police diaries.—Police diaries are not evidence. But they can be used for contradicting the persons who made the diary. 19 A. 390; see also 19 Bom. L. R. 590.

146 When a witness is cross examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

Questions lawful in cross-examination

- (1) to test his veracity,
- (2) to discover who he is and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture

—“146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

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- (1) To test his accuracy, veracity, or credibility; or
- (2) To shake his credit, by injuring his character.

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compel such questions to be answered when the truth of the matter suggested would not in the opinion of the Court affect the credibility of the witness as to the matter to which he is required to testify." (*Steph. Ev. Art. 129*).

Section.—This does not mean that—
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statements be proved, unless that part of the witness's evidence, which they counteract, was itself liable to be contradicted. (*Cun. Ev.* 378)

Cases.—1923 Cal. 315 (2).

147. If any such question relates to a matter relevant to the

When witness to be com-
pelled to answer. suit or proceeding, the provisions of section 132 shall apply therein

Scope.—The word "such," it is presumed, refers to the last clause of the preceding section, and not to the word "any," in earlier part of that section. None but relevant questions can be asked in cross-examination, *ante*, section 138, clause 2. But relevancy is of two-fold character; it may be directly relevant in its bearing on, elucidating or disproving, the very merits of the points in issue. In such a case, the witness is not protected from answering, notwithstanding the answer may criminate him. For section 132 is made applicable to this case. There is another kind of relevancy which is collateral to the issue. Such is the character of the witness, which is always relevant; because if he is dishonest no faith can be put in the story he utters. Where questions are put to a witness, not for proving or disproving the point in issue, but exclusively and merely to show what is the character of the witness, the Court is to decide whether the question is to be answered or not. (*Norton Ev.* 328).

148. If any such question relates to a matter not relevant

Court to decide when
question shall be asked and
when witness compelled to
answer. to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations;—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4) the Court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

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known facts—make it the plain duty of the Court to permit searching and disparaging inquiries on matters irrelevant to the issue, for the purpose of aiding the jury in a collateral inquiry as to his credit. (*Burr. Jones 834*)

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds,

Illustrations.

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakaik. This is a reasonable ground for asking the witness whether he is a dakaik.

(b) A pleader is informed by a person in Court that an important witness is a dakaik; the informant, on being questioned by the pleader gives satisfactory reasons for his statement. This is reasonable ground for asking the witness whether he is a dakaik.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

questioned
answers.

Reasonable Ground.—The Court may, if it is of opinion that a barrister who is told a discrediting fact by an attorney or vakil, or a pleader, or a witness, or a person in a position to give evidence, has no reasonable grounds for asking the question, may refuse to allow the question to be asked.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Object.—The object of these sections is to lay down, in the most

clear manner, the rules which govern the conduct of a barrister, pleader, vakil or attorney, not on the red back to counsel are a rule which is prohibited being of a license given him for the purpose of conducting his client's case, is one which can only be dealt with by a Full Bench. 9 Ind. Cas. 509.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before

Indecent and scandalous questions.

the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Object.—It is recognized that from the necessity of the case, the method and extent of the cross-examination must depend very largely upon the discretion of the trial judge : and this is especially true where the object is to test the accuracy and credibility of the witness. If the cross-examination is proceeding beyond those bounds which are proper to test the accuracy and credibility of the witness, or is being needlessly protracted, or is being conducted in a manner which is unfair to the witness, or if it is inconsistent with the decorum of the court-room the Court is not bound to wait for objections from counsel, but may interfere of its own motion. Every Court having original jurisdiction is authorized to reject evidence on immaterial issues, though objected to by neither party ; and if it were otherwise, it would be a reproach to the administration of justice (*Burr Jones S.* 842) " Justice to the witness demands that all the Courts to which he appeals for present protection shall have power to shield him from indignity, unless the circumstances of the case are such that he cannot fairly invoke that protection. If the range of irrelevant enquiry be committed to the discretion of adverse counsel, it will be no reparation of the wrong to the witness that the judgment, in which he has no concern, may be afterwards reverted by appellate tribunal." *Great Western Trunpike Road Co v. Loomis*, 32 N. Y. 127. It is almost needless to add that cross-examination on matters either directly in issue or directly relevant to the issue is a matter of right, and its exclusion is error. It is only after right has been substantially and fairly exercised that the allowance of cross-examination becomes discretionary with the trial Court.

152. The Court shall forbid any question which appears to it

Questions intended to insult or annoy.

Court needlessly offensive in form.

Object.—Counsel have no right to inject into the cross-examination

153. When a witness has been asked and has answered any

Exclusion of evidence to contradict answers to question only in so far as it tends to shake his credit, or to show that he has answered falsely.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations

(a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Object.—The object of this section is to prevent trials being spun out to an unreasonable length. (*Mark by Ev.* 103.) The reason of the rule, which restricts the right as regards giving evidence to contradict a witness, is that it is an object of great importance to confine the attention of the jury to the specific issues as much as possible. 6 B. H. C. R. 93 (96).

Scope.—This section is based upon the rule of English law that, if questions put to a witness for the purpose of testing his credit relate to relevant facts, they can be contradicted by independent evidence; if to irrelevant, they cannot. It is obvious that, but for such a rule, a suit might

easily digress into various collateral issues and become practically inter-

always be put in to refute him. (*Norton Ev.* 332.) *Exception (2)*—This exception is based on *Attorney General v. Hitchcock*, 16 L. J. Ex. 25. Whether this can be done has been the subject of much doubt in England. In the above case, *Pollock, C. B.* observed; "A witness may be asked how he stands affected towards one of the parties."

offer of a bribe by a witness to another, or the fact of a bribe having been accepted by him, tends to show that he is not impartial."

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Principle.—As a party cannot put leading questions to his own witness, it is apparent that injustice would ensue if the party, discovering that he had been mistaken in his witness in that the witness was adverse to him, were tied down by any hard-and-fast rule as to leading the witness. The rule is correctly indicated by *Greenleaf* when he says: "But the weight of authority seems in favour of admitting the party to show that the evidence has taken him by surprise, and is contrary to the examination of the witness preparatory to the trial, or to what the party had reason to believe he would testify, or that the witness has recently been brought under the influence of the other party and has deceived the party calling him. For, it is said, that this is necessary for his protection against the contrivance of an artful witness, and that the danger of its being regarded by the jury as

evidence is no greater in such cases than it is where the contradictory allegations are proved by exception to the general questions to a witness any reason, may be deemed the witness is attempting or if the witness is in fact in permitting the direct examination to take the character of a cross-examination, and, in the latter case, leading questions may be asked as a matter of right. (*Burr Jones, Ev. S. 817*).

In its discretion.—The unwillingness or other state of mind of the witness, is to be decided by the Judge from his demeanour upon the stand and from such facts in evidence as may show that the witness, because of his relationship to a party, interest in the cause or for other reason, has some bias against the one calling him or some disinclination to testify. (*Burr Jones, Ev. S. 817*).

Scope.—As a general rule a party has no right to discredit his own witness, or to call any evidence to contradict him, for he has voluntarily placed the witness before the Court as worthy of belief. But it sometimes happens that a witness proves unexpectedly adverse to the party who calls him, and then this rule and the rule that no leading questions can be put in examination-in-chief are relaxed, and the counsels are allowed by the Court to put leading questions in examination-in-chief and may attack the character and dispute the veracity of the witness in fact, to cross-examine him. The foundation of the rule against leading questions is that the witness is favourable to the party who calls him, gone, witness examined 491. party this witness the other regards open to the prosecution in a criminal trial to cross-examine their own witness unless the Court declares him to be a hostile witness; unless this is done the answer to questions would not be admissible in evidence and the Court should not allow such questions. 1 Pat 758—4 Pat. L. T. 232 There is no distinction for the purposes of this section between attesting witnesses whom a party is obliged to call and other witnesses whom a party cites of his own choice. 47 C. 1043—24 C. W. N. 860 A witness who is unfavourable is not necessarily hostile for a hostile witness is one who from the manner in which he gives his evidence, shows that he is not desirous of telling the truth to the Court. 34 C. L. J. 107.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him :—

Impeaching credit of witness,

- (1) by the evidence of persons who testify, that they from their knowledge of the witness, believe him to be unworthy of credit ;
- (2) by proof that the witness has been bribed, or has "accepted" the offer of a bribe, or has received any other corrupt inducement to give his evidence ;
- (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;
- (4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character

Explanation —A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-

Illustrations.

C says

aid that

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Legislative changes.—The word "accepted" in para (2) was substituted for the original word "had" by Act 18 of 1872.

Scope.—"are three wa witness. (1) i.e, the evide

the English law but it is only applicable in a case of rape and when the prosecutrix is examined.

Clause (1).—Here the enquiry must be limited to what they know of his general character, on which alone the judgment should be founded; particular facts cannot be gone into. So a party may call witnesses to swear that, in their opinion, based on their knowledge of the general character and reputation of a witness on the other side, he is not to be believed on his oath *R. v. Brown*, L. R. 1 C. C. R. 70; *Cockle Case*. 283.

Clause (2).—In *Att. General v. Hitchcock*, 1 Ex. 91; 11 Jur. 498,

by him, tends to show that he is not impartial." This is an example of misconduct connected with the proceeding.

Clause (3).—See illustrations (a) and (b). Any statement, verbal as well as written, made by a witness must be specified before he can be impeached. The statement is specified in the following cases (*on Ev.* 334). As regards statements made before police vide 11 B. H. C. 120; 11 B. 657; 15 A. 25; 27 A. 469; 17 P. R. 1886 Cr., 16 C. 610; 33 C. 1023; 17 A. 57; A. W. N. 1905, 64; 16 C. 612 N; 20 C. 642; 8 C. W. N. 218; 26 M. 191. The expression "which is liable to be contradicted" means "which is relevant to the issue." 17 C. 344; 14 L. W. 612

Clause (4).—"On indictments for rape or an attempt to commit that crime, while evidence of general bad character is admissible to show that the prosecutrix, like any other witness, ought not to be believed upon her oath, proof that she is a reputed prostitute would go far towards raising—

an inference that she has yielded willingly to the prisoners' embraces. General evidence, therefore, of this kind will be received, though the woman be not called as a witness, and though, if called she be not asked, on cross-examination, any questions tending to impeach her character for chastity" *Norton. Ev.* 334

156. When a witness whom it is intended to corroborate gives

Question tending to corroborate evidence of relevant fact, admissible.

evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred,

if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Corroborative evidence.—This is additional evidence proving similar facts or facts calculated to produce the same results as facts already given in evidence. The distinction between corroborative and cumulative evidence is clearly marked, although, ordinarily, corroborative evidence, simply means fortifying evidence, whether it is evidence of different or similar facts, or additional evidence of the same fact. (*Burr. Jones s. 86*).

Scope.—This section provides for the admission of evidence given for

elicit these surrounding circumstances in the first instance from the witness himself, and for this the section makes provision (*Cun. Ev.* 388). This section, in effect, declares evidence of certain facts to be admissible; and if it had not been inserted the Judge would have had to determine the relevancy of these facts by reference to secs. 7 and 11, and he perhaps have been influenced by the practice in England which against the admission of such evidence, (*Markby, Ev.* 109, 110)

157. In order to corroborate the testimony of a witness, any

Former statements of witness may be proved to corroborate latter testimony as to same fact. **former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.**

English law.—Facts which tend to render more probable the truth of a witness's testimony on a material point are admissible in corroboration, irrelevant to the issue and although fact to be corroborated. (*Wilcox v.*

But facts which are not more consistent with the truth of such testimony than the reverse, are inadmissible. Whenever the testimony of a witness is challenged by cross-examination or otherwise, corroboration thereof is allowable, and in certain cases no verdict can be obtained without the production of such evidence. The corroborative facts and evidence must, however, be proved otherwise than by the testimony of the witness to be corroborated. Formerly the fact that a witness had made a previous statement similar to his testimony in Court could always be proved to confirm his testimony. But afterwards the rule was changed, and such evidence is now generally inadmissible either on direct examination to confirm his testimony, or on re-examination to re-establish his credit when impeached by proof of a previous contradictory statement (*Phipson Ev.* 149).

Scope.—Before corroborative evidence is admissible, the evidence sought to be corroborated must have been given. 5 C. W. N. XVI. A statement made by a witness to a chief constable can only be used under this section to corroborate the evidence of the first witness at the trial. Rat. Un. Cr. C 508. The force of any corroboration by means of previous consistent statements must evidently depend upon the truth of the proposition that he who is consistent desires to be believed. 11 B. H. C. 197 (198).

Cases.—16 C. W. N. 145; 25 M. 210, 10 C. 970; 4 Bom. L. R. 434; 7 W. R. Cr. 31, 12 W. R. Cr. 3, 2 C. W. N. 712; 6 M. L. T. 17, 12 C. W. N. 266, 3 L. B. R. 250; 3 P. R. 1904 C. R.; 26 Ind. Cas. 138; 22 B. 596, 13 C. W. N. 197, 4 Ind. Cas. 700; 13 O. C. 7; 1923 Mad. 20; 5 Lah. 324, 82 Ind. Cas. 142; 19 A. L. J. 947; 61 Ind. Cas. 650, 6 Pat. L. J. 241; (1919) Pat. 352; (1919) M. W. N. 199; 55 Ind. Cas. 273; 58 Ind. Cas. 344, 49 C. 732—26 C. W. N. 589; 45 M. 766, 2 Pat. L. J. 42.

158. Whenever any statement, relevant under section 32 or

What matters may be proved in connection with proved statement relevant under section 32 or 33 **33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was**

made, which might have been proved if that person had been called as a witness and had denied upon cross examination the truth of the matter suggested.

Scope.—The statements admissible under sections 32 and 33 are exceptional cases, and the evidence is only admitted from the improbability or great inconvenience of producing the authors of the statements. It is only just therefore, that all the same safeguards for veracity should be provided as if the authors of the statements were themselves before the Court, and subjected to oath and cross-examination (*Norton Ev* 336). The present section has the effect of exposing any such statement, when admitted, so far as may be, to all the scrutiny and giving the advantage of all the corroboration, which it would have had on the cross-examination of the person making it (*Cun Ev* 390). See also 23 C 441.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at the time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

When witness may use copy of document to refresh memory.

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Principle.—It is a well-settled and undisputed principle of the law of evidence that a witness, under certain legal restrictions, may refer to written or printed memoranda, documents, papers or letters, for the purpose of refreshing, assisting or stimulating his recollection and memory with regard to the facts about which he is testifying. The rule requires that a witness should testify only to such facts as are within his own knowledge and recollection; but this requirement is not violated by permitting him to refresh his memory in the manner above indicated. Bentham has pointed out the advantages and disadvantages of allowing a witness on the stand to consult notes or memoranda.

for the purpose of refreshing the memory. "On the one hand, what you want is a prompt and unpremeditated answer. If you allow him time to consult notes, you partly lose the advantage of that lively and quick examination which does not give bad faith time to think." On the other hand, if this assistance is denied, the witness will often be unable to give accurate and complete testimony, and the whole object of the judicial investigation may be defeated. It is universally agreed that the balance between the two inconvenience is by no means equal, and that, under proper limitations, witnesses may resort to memoranda or writings in aid of memory. Such is the ordinary human memory that very few witnesses would be able to testify as to particular dates, numbers, quantities and sums, after a lapse of a few years, if they were not permitted to refer to papers and writings which they knew to be correct at the time they were made. (*Burr Jones Ev.* § 871.)

Cases.—The writing need not be admissible in evidence. 8 C. 211; 9 C. 455, 16 C. P. L. R. 122. Under this section it is not necessary that the witness must be sure that what was reduced to writing by him is a correct record. It is enough if, on reading it, the true facts are recalled to his memory. If the words are not recalled to his memory, the notes may be admitted under s. 160, if he is sure that the facts were correctly recorded in the notes. 5 M. L. T. 393—9 Cr. L. J. 456—32 M. 384. A police officer is not bound to refresh his memory. 8 C. 154 (156), see also 8 C. 745.

Statement made to police. 9 C. 455, 16 C. 610, 20 C. 242; 31 C. 1050; 11 B. 657; 4 S. L. R. 38 Cr. But see 10 C. W. N. 890.

Special diary.—19 A. 390 (F. B.), 19 A. L. J. 76.

Collection papers.—10 C. 248; 11 C. 407.

Postmortem examination report.—9 C. 455.

Dying declaration.—8 C. 211.

Other cases.—72 Ind. Cas 985.

Zeminder's register.—5 C. 353.

Confession.—16 C. P. L. R. 122.

Arbitration proceedings.—5 C. W. N. XVI.

160. A witness may also testify to facts mentioned in any

Testimony to facts stated in document mentioned in section 159. such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books

were correctly kept, although he has forgotten the particular transactions entered

Scope.—In order that a document may be used to refresh the memory, it is by no means necessary, that the witness after having seen it should have any independent recollection of the facts mentioned therein or connected therewith, but it will suffice if he remembers that he has seen the paper before, and that when he saw it, he knew its contents to be correct, or even if, entirely forgetting the instances themselves, and the fact of his having seen the paper, he can still, in consequence of recognising his signature or writing upon it, vouch for the accuracy of the memorandum, or swear to the particular fact in question. Thus where an agent who made a parol lease, and entered a memorandum of the terms in a book states that he has no memory of the transaction save from the book, though on reading the entry he entertains no doubt that the fact really happened, is was held sufficient" *Taylor* § 1412. See 49 C. 573. The

200=20 D. 94.

161 Any writing referred to under the provisions of the two Right of adverse party as last preceding sections must be produced to writing used to refresh and shown to the adverse party if he memory. requires it: such party may, if he pleases, cross-examine the witness thereupon.

Scope.—In all cases where documents are used for the purpose of refreshing his memory, it is usual and reasonable,—and if the act, it is necessary,—that opposite counsel should that on cross or re-examination refreshing his memory by every part. Neither is the adverse party bound to put the document in, as part of his evidence, merely because he has looked at it, or examined it.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit direct the translator to keep the contents secret, unless the document is to be given in evidence, and if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Comment—If a person served with a *sub poena* admits that he has the documents required with him, he must produce them. He may be asked what documents he has with him, and he is bound to answer the question without being sworn, and produce the documents. The witness produces the document to the Court and not to the parties, and the Court decides whether it is to be used or not. The witness can, of course, take an oath as to the truth of the contents of the document. If he refuses to produce the document, he is liable to contempt. A witness who produces a document is not bound to answer questions as to its contents.

assisted on if the party who obtained the summons so desires' 45 Ind. Cas. 898.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Soope.—The production of papers upon notice does not make them evidence in the cause, unless the party calling for them inspects them, so as to become acquainted with their contents; in which case he is obliged to use them as his evidence, at least if they be in any way material to the

is bound to put it in as evidence if the other party requires it. The law will not allow him to compel its production, and see its contents, and then take use of it or not, according as it strengthens and impairs his cause." *Can Introduction to Ev § 117*) Where a party to a case calls for a document from the other party and inspects the same under this section, he takes the risk of making it evidence for both the parties. 5 Bom L.R.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Scope.—If a party, after a notice, declines to produce a document, when formally called upon to do so, he will not afterwards be allowed to change his mind, and therefore, if he once refuses, he cannot, when his opponent has proved a copy, and is about to have it read, produce the

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time of any witness, or of the parties about any fact relevant or irrelevant; and may order the

Judge's power to put questions or order production

production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :

provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

has power to ask any question he pleases about relevant facts, if he does so in order to discover or obtain proper proof of relevant facts. 10 B. 185 See also, 11 B. H. C 166; Cr. Reg 14—10—1885.

The words "any witness" in the section include a Court witness 9 O & A. L. R. 549. Even though a document is not produced at the first hearing of a case the Court can call for the document under this sec-

Casea—34 M. L. J. 326; 45 Ind Cas. 734; 44 Ind. Cas. 433; 66 Ind. Cas. 15.

166. In cases tried by jury or with assessors, the jury or assessors, may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Power of jury or assessors to put questions.

CHAPTER XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

167. The improper admission or rejection of evidence shall
 not be ground of itself for a new trial or
 reversal of any decision in any case, if it
 shall appear to the Court before which

that objection is raised that independence of the evidence which
 have varied the decision.

Section 167. The admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which that objection is raised that independence of the evidence which have varied the decision.

legal grounds established by legal testimony and not upon mere suspicious circumstances, 25 C. W N. 409

(Schedule.—Enactments repealed.)

SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III, Cap. 57.*	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty intitled "(An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies," as requires the servants of the East India Company to deliver inventories of their estates and effects for rendering the law more effectual against persons unlawfully resorting to the East Indies, and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38 so far as it relates to Courts of Justice in the East India
Sat 14 & 15 Vic., Cap. 99 † ‡	To amend the Law of Evidence.	Section 11 and much of sections 19 and 23 relating to British India.

* The East India Company Act, 1786.

† Short title, The Evidence Act, 1851—see the Short Titles Act, 18 (59 & 60 Vict., c. 14).

‡ After this certain entries have been repealed by Act 12 of 1927.

